



# City of Hampton, VA

## Meeting Minutes

### City Council

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

*Ross A. Kearney, II*  
*Will Moffett*  
*Joseph H. Spencer, II*  
*Molly Joseph Ward, Mayor*  
*Christopher G. Stuart*  
*Donnie R. Tuck*  
*George E. Wallace*

*Staff:*  
*Mary Bunting, City Manager*  
*Cynthia Hudson, City Attorney*  
*Katherine K. Glass, CMC, Clerk of Council*

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Wednesday, June 13, 2012      6:59 PM      Council Chambers, 8th Floor, City Hall

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#### **CALL TO ORDER/ROLL CALL**

#### **MOLLY JOSEPH WARD PRESIDED**

**PRESENT:** Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace

**ABSENT:** Joseph H. Spencer, II

#### **INVOCATION - George E. Wallace**

Mayor Ward welcomed everyone to the meeting and noted Councilman Spencer is attending a previously planned family vacation which he informed Council of when he agreed to fill the remaining portion of former Councilwoman Angela Leary's term last December. She also expressed appreciation to Councilman Spencer for his service.

#### **PLEDGE OF ALLEGIANCE TO FLAG**

#### **MAYOR'S COMMENTS**

1. 12-0253 Resolution in Recognition of Ross A. Kearney, II

**WHEREAS,** Ross A. Kearney, II, was born on March 17, 1943; and

**WHEREAS,** he attended St. Leo College in Florida and the Virginia Military Institute before receiving his bachelor's degree in Secondary Education from Old Dominion College in 1967; and

**WHEREAS,** Mr. Kearney is a lifelong resident of the City of Hampton; and

**WHEREAS,** Mr. Kearney married his wife, Trudy, on September 4, 1965; and

**WHEREAS**, from that union, the couple have three children, Ross A. Kearney, III, Erin Kearney Lazar and William Heath Kearney and five granddaughters, Olivia Lazar, Abigail Lazar, Madison Kearney, Megan Kearney and Morgan Kearney; and

**WHEREAS**, in 2007, after more than 40 years of teaching, he retired from Hampton City Schools as a Political Science teacher having taught at Jefferson Davis Junior High School, Pembroke High School and Phoebus High School; and

**WHEREAS**, during his career as an educator, Mr. Kearney served as a football coach, and while at Phoebus High School, served as a Director of Student Activities for 10 years and a Department Chairman for 16 years; and

**WHEREAS**, he served as an adjunct professor at Hampton University and at Old Dominion University where he was also a Hampton Roads Fellow at the Darden School of Education; and

**WHEREAS**, Mr. Kearney is a member of Saint Joseph Catholic Church where he served as Youth Director for 10 years; and

**WHEREAS**, he is a life member of the Phoebus Volunteer Fire Company with which he has over 45 years of service; and

**WHEREAS**, Mr. Kearney has served as a Hampton City Council Member since 1992; and

**WHEREAS**, from 1996 – 1998, he served as Hampton's Vice Mayor; and

**WHEREAS**, from 2004 – 2008, he served as Hampton's Mayor; and

**WHEREAS**, Mr. Kearney has been involved in many groups and organizations including Phoebus Civic Association (past President), Phoebus Improvement League (Charter member), Hampton Cup Power Boat Regatta Committee (past chair), Hampton's 375<sup>th</sup> Anniversary Committee, Bay Days (Commodore 2010), Hampton Young Democrats (charter member), Young Democratic Clubs of Virginia (past State President), National Education Association (life member), Virginia Education Association and Hampton Education Association; and

**WHEREAS**, while serving as Mayor, Vice Mayor, and Council Member, Ross A. Kearney, II, has been a member of numerous boards and commissions including the Hampton Roads Tunnel Authority, the Hampton Roads Regional Jail Authority (past Chair), the Hampton Roads Planning District Commission, the Hampton Roads Economic Development Alliance, the Hampton Roads Military and Federal Facilities Alliance, the Hampton Arts Commission, the Hampton Tourism Advisory Committee, the Peninsula Public Sports Facility Authority, the Town and Gown Committee, the National Aeronautics Support Team, the Hampton Federal Area Development Authority, the Virginia Living Museum Board, various policy committees for the Virginia Municipal League and as one of Hampton's first appointees to the Fort Monroe Authority; and

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Hampton, Virginia, that Ross A. Kearney, II, be and hereby is, recognized and

commended for his service to the Hampton City Council and the citizens of the City of Hampton.

**BE IT FURTHER RESOLVED** that a copy of this Resolution be spread upon the minutes of the June 13, 2012, City Council meeting of the City of Hampton, Virginia, and that an appropriate copy be signed by the Mayor, attested by the Clerk and presented to Ross A. Kearney, II.

Adopted at the regular meeting of the City Council of the City of Hampton, Virginia held on June 13, 2012.

Mayor Ward announced today is Councilman Kearney's last meeting. She thanked him for honorably serving with us and our community for many years. She read the resolution in recognition of him and presented him with a commemorative City of Hampton watch. Councilman Kearney was then photographed with the Councilmembers and his family members who were in attendance.

Councilman Kearney thanked everyone for the recognition. He noted his son and two of his granddaughters were preparing for a dance recital, and therefore, were not able to attend. He stated it has been an honor to serve on Council for the past twenty years and thanked his family for their support. He then thanked the citizens of Hampton for having confidence in him over the last five elections and stated that serving was a humbling experience and an honor which he never took lightly.

Councilman Kearney commented all that we have done, positive and negative has been a vision from someone on Council. He then listed some of the City accomplishments which occurred during his time of service as: salutorian and valedictorian recognition, the widening of Mercury Boulevard, former Newport News Mayor Joe Frank's involvement in the positive things at the War Memorial Stadium, the Peninsula Town Center, the CDA approach, two new schools, full staffing of the Police and Fire Departments, the establishment and creation of numerous committees including the Neighborhood Commission, the Military Affairs Committee, the Finance Committee and the return of the citizen Hampton Housing and Redevelopment Authority committee. He listed additional City accomplishments as the building of Fire Station 11, maintenance and repairs done to City Hall, restoration and improvements of the Buckroe Beach fishing pier and the Buckroe area, the Public Affairs Department, Channel 47's work to keep citizens informed and televise meetings, the Budget Neighborhood Outreach Program, the establishment of the School Funding Formula, the funding and physical improvements to Downtown Hampton and the Phoebus community, the creation of Coliseum Central BID, shoreline protection, dredging of the waterways and the Proton Beam Center at Hampton University.

Councilman Kearney stated he will miss coming together as a group to work things out. He said it has been an honor to work with the dedicated staff, the administration, the City Manager, the Mayor, the Vice Mayor and the members of Council. He then recognized the newly elected members of Council, Mr. Billy Hobbs and Ms. Chris Snead. He concluded his comments by stating he believes the future is bright for this community, not because of him, but because of the citizens of Hampton, the way this organization has been put together and the support given to the City Manager. He stated to all citizens and members of Council, it has been an honor and pleasure to have served over the last twenty years.

ADOPTED - Following the adoption of the resolution, Mayor Ward presented a framed copy of the resolution and photographs were taken of Councilman Kearney and his family and also of Councilman Kearney with the City Council. Councilman Kearney gave remarks following the presentation.

**Motion made by:** Vice Mayor George E. Wallace

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

2. 12-0260 Presentation from Dr. William R. Harvey on the Hampton First Project

Mayor Ward introduced Hampton University President Dr. William Harvey to brief Council on the Hampton First Project. She stated we are honored to have him present and are excited about what he has been able to accomplish.

Dr. Harvey greeted Mayor Ward, the members of Council and Ms. Bunting and thanked them for allowing him to serve the City of Hampton. He then provided the following summary report on the Hampton First Project.

Dr. Harvey said when he was asked to lead the revitalization of Downtown Hampton, his goals were to (1) use the Steiner Report as a spring board. (2) use not only business men and women, but also as many citizens and people as possible including those in the business community, Downtown Business partners, technology and knowledge partners, members from the faith based community and members from the arts community to participate in over two dozen meetings. (3) not do another study dealing with only part of our City; instead, take a holistic view of revitalizing Fort Monroe, Phoebus, Coliseum Central, as well as prioritizing Downtown Hampton (4) build a solid foundation that might last longer than current members of Council and the current President of Hampton University. He noted he felt it was important to have short-term, mid-range and long-term goals. (5) be as inclusive as possible. (6) appoint a board of 24 people. (7) create a steering committee and sub-committees regarding the waterfront, economic development, the arts, technology and all miscellaneous things we felt we should tell the consultant.

Dr. Harvey stated we would like Downtown Hampton to be an urban waterfront destination with a particular interest in weekend and summer activities, and a place for families, retirees and citizens to stroll, meet, shop and enjoy our waterfront and other natural resources. We want to make this a showplace for all. Dr. Harvey noted the consultant will be informed by and work with the committee and the committee will keep Council informed of what takes place.

Dr. Harvey described the vision the committee has for what Downtown Hampton could be. It could be a place where people can enjoy a leisurely stroll on the waterfront, have a central food facility with indoor and outdoor seating, patron a well-maintained grocery store, patron a sports bar and other attractions including a pirate museum, artist marketplace, clothing stores, specialty stores, fishing excursions, a children's discovery

museum, a video game arcade, a farmers' market, a seafood alley and a Hampton garden. He listed Annapolis, Baltimore and Savannah as some of the places which have waterfronts with attractions similar to those recommended. These, other ideas and major themes were presented by Board members and others.

Dr. Harvey listed additional topics the Board members presented to the consultant as (1) waterfront revitalization. Clean up the waterfront, transform it into an esplanade, possible relocation of the waterfront parking garage, provide transportation to and from across the waterfront, develop an aquatic theme, host water events such as sailing regatta, water skiing and sailboat shows, initiation of job creation and economic development strategy and create retail development opportunities such as grocery stores and small shops. (2) capitalize on and market Hampton's history and heritage to make it more attractive. (3) provide transportation between downtown and historic sites. (4) sponsor events including wine and seafood festivals, races and marathons. (5) get citizens excited about the City and its activities.

Dr. Harvey noted we are not going to be able to do everything; but, we need to put everything on the table to work together to come up with an idea which comes from the entire citizenry. He then noted he has informed every group that if they have any other agenda other than Hampton, Virginia, then they do not belong here; we do not want a political agenda; the only agenda is to see what we can come up with to make Hampton one of the loveliest villages on the entire east coast.

Dr. Harvey stated since Sasaki and Associates has been chosen to provide support for Fort Monroe, we asked them to work with us so that the project will be an inclusive effort. We asked them to think about a large economic development strategy and to differentiate it as an urban waterfront destination. In creating a Master Plan for Downtown Hampton, Sasaki will conduct an inventory analysis, host stakeholder meetings, create concept plans, draft a master plan and offer implementation strategies. He emphasized that there has to be buy-in from various segments of our community as well as public/private partnership in order for this to be successful.

Dr. Harvey said when we ask for support for the consultants, we want to be certain that the money is transparently used as we are guardians of taxpayers' money, and therefore, will ask the City Attorney how to best do that. He noted initially, he was advised that the study would require \$600,000-\$1,000,000; however, he felt a first rate study could be done for less than \$300,000; and therefore, is specifically asking for \$285,000.

Dr. Harvey stated he has met with the members of the Board and the steering committee and everyone is excited about this once in a generation opportunity. He said he believes if we do not move forward with this now, it may be three to five decades before we have this opportunity again. He continued stating there are so many possibilities which have potential, such as Harbor Square, the waterfront, and trolleys to and from portions of the City. He said this will not be easy; however, we must listen, plan, and make sure our structure is as strong as possible so that Hampton First will be here.

Dr. Harvey recognized some of the Board members in the audience by having them stand. He then stated the next step in the process is to select a consultant and have them listen to what we have to say.

Downtown Hampton Development Partnership (DHDP) Executive Director Ms. Sherry Spring expressed excitement about the project and noted this is the most exciting thing she has been involved with in the seven years she has been in Hampton. She stated when Dr. Harvey put the group together based on Mr. Steiner's recommendation, the excitement and positive waves that went through the DHDP Board were tremendous; the DHDP Board supports these efforts. She said everyone was excited about the name "Hampton First", and while everyone is excited about Downtown development, building throughout the entire City will benefit everyone for many years. She stated she was proud to be a part of these efforts and is proud to have Dr. Harvey leading the group. She said she looks forward to the years of successes which will have been initiated here tonight.

Dr. Harvey opened the floor for questions from Council.

Mayor Ward commented that this initiative was born out of past work from the community and Dr. Harvey's service has been supported and initiated by the Board and the community. She then summarized the following series of dates and events which bring us to where we are today: Initial conversations began in February 2010 with the DHDP regarding how to move forward with the Master Plan. In July 2010, Mr. Yaromir Steiner was hired in conjunction with the DHDP to help us provide a fresh perspective. Mr. Steiner interviewed approximately 100 stakeholders including artists, property owners, business owners, leaders in the faith community, political leaders, former City Managers as well as people on various Boards and Commissions to come up with a recommendation to the Council. A kick-off event for the public meeting for the Hampton Community update was held in October 2010 where over 200 people were in attendance to discuss these goals. In January 2011, the Steiner interim report was presented to various community groups and Council with the key observation being we needed to take a broader perspective on economic development throughout Hampton, not just downtown. Mr. Steiner met with specific leadership groups in technology and education, the faith based community and neighborhood and civic leaders. In December 2011, Mr. Steiner submitted his final recommendation to have a leader from the community of Dr. Harvey's stature and energy to pull this together. She thanked Dr. Harvey for his efforts and noted this has been a long time coming.

Mayor Ward recognized the new members of Council who will be sworn in on July 1st. She noted how important it is for the community to understand that they are also paying attention to this process and that we care about their opinion. She then invited the new members of Council to give remarks.

Councilman Elect Mr. Billy Hobbs stated during the campaign, we spoke about Hampton being close to greatness. He said with the lineup of experts Dr. Harvey has with Hampton First, he is excited to see this plan moving forward. In his opinion, Hampton First is the answer to making Hampton become great. He thanked Dr. Harvey for his efforts.

Councilwoman Elect Ms. Chris Snead greeted the members of Council and Dr. Harvey and stated she, too, is excited about Hampton moving forward. She said she campaigned on moving Hampton forward and believes Council made the right decision in getting someone of the caliber of Dr. Harvey and his Board members to work on this project. She noted the political aspect has been taken out of it and the citizens of

Hampton will make our vision come true. She further noted she is a part of whatever decision is made this evening regarding funding this endeavor.

Councilman Stuart commented that he has worked from an office located in Downtown Hampton for many years. He noted years ago, his father-in-law had a vision of what downtown could become when he purchased a building there. He stated that the momentum, vibrancy and dynamic nature of where we are and where we can be is tremendous; however, we have added a leader and people from the community who love our City and bring wisdom to the table. He added successful communities have business continuity in support of endeavors, and this is what Mr. Steiner identified. Our citizens will see tremendous benefits as the group looks at ideas and determines what fits in order to make effective decisions. He said he is in support of the utilization and looks forward to seeing great things happen.

Councilman Tuck recognized Dr. Harvey for what he has done for Hampton University and stated that he has tremendous respect for Dr. Harvey and his vision. He said he is most impressed with Dr. Harvey and his Board because they want to make Hampton the thing that brings people to Hampton; instead of one thing, Fort Monroe, for example. He stressed the importance of being careful with the expenditure of dollars, and in this case, is excited to support the project, particularly because he understands where the money is coming from.

Councilman Moffett commented that we have a world class leader and Board, many of which he has worked with. He stated he is also excited about the project and noted that this is about legacy. He said politicians run for the next election, but statesmen run for the next generation, and therefore, we are looking out for our next generation which confirms we are moving in the right direction and making the right decision. He expressed gratitude to the members of the Board and Dr. Harvey for doing this without compensation proving that they are doing this for the love of Hampton.

Councilman Kearney stated he is leaving Council very proud hoping all of these great things will happen. He noted those on the Board are great leaders in our community. He mentioned, for the record, that the entity that has been a part of this community and put their money into the community has been Hampton University making the community so much better. He said that is the leadership he looks forward to. He added even though he may no longer be on Council, he will be watching and looks forward to being able to help in any way possible. He thanked the committee and Dr. Harvey for their service.

Vice Mayor Wallace concurred with the comments of his fellow members of Council and thanked Dr. Harvey and his Board for leading us to a collective vision because where there is no vision, there is no progress or movement. He stated he looks forward to sharing and helping materialize the visions that will be created by this group.

Mayor Ward said Dr. Harvey absolutely has her support and we appreciate the service, time and energy of the citizens and the Board.

At Mayor Ward's request, Ms. Bunting gave the following explanation as to the source of the money for this project. Ms. Bunting stated we have been planning for some time to make these investments. We were briefed by Mr. Steiner on engaging a world-class expert on how to proceed, and in what order and what priority to do the strategies

Dr. Harvey described which would require an investment of money. It is an investment because of the return we will receive as a community for the time and energy we invest in this effort. We set aside some of the downtown capital money that had been previously allocated by a prior Council and determined not to spend it, but rather have it available when the business leadership group was formed and ready to proceed. We have money in the Suntrust Collins Account, a project because the economy did not move forward, and rather than reallocating that money to another purpose we judiciously kept it on hand for this time. The money is available to transfer to this effort. The City Attorney has advised that might best be done with the DHDP and Hampton First working together. With a clear unanimous support of Council and in-coming Councilmembers, staff will make that happen immediately.

In response to Dr. Harvey's inquiry about where to go from here, Mayor Ward replied the City Manager has clear direction from Council, and the thought is we will make a transfer to the DHDP. The City Manager will then work with Dr. Harvey on the next steps.

Dr. Harvey thanked Council for the unanimous support. He noted his desire is to have the consultants do as much work over the summer as possible. Given the fact that Council has approved this, he can get the consultants to begin work.

Dr. Harvey concluded his comments saying we are not getting paid; however, we are reaping dividends by what we are trying to do for our City. He said he often tells the young people at Hampton University, if they really want to do great, then do as Jesus said "Serve Others". Thank you.

PRESENTED by Dr. William R. Harvey. Dr. Harvey was accompanied by members of the Board of Hampton First. Sherry Spring, Executive Director of the Downtown Hampton Development Partnership, also gave remarks. Councilman-Elect Billy Hobbs and Councilwoman-Elect Chris Snead gave remarks followed by remarks by Councilmembers Stuart, Tuck, Moffett, Kearney, Vice Mayor Wallace and Mayor Ward. The City Manager, Mary Bunting, explained how the funding for this venture will be accomplished.

3. 12-0229 Resolution Confirming The Declaration Of A Local Emergency Made Necessary By The Tornado of June 1, 2012, Which Was Declared By The Hampton Director Of Emergency Management On June 1, 2012

**WHEREAS**, Section 44-146.21 of the Code of Virginia, 1950, as amended, prescribes necessary actions precedent to a declaration of a local emergency; and

**WHEREAS**, Section 44-146.21 prescribes two methods for declaring an emergency: the first is accomplished by the local director of emergency management with the consent of the governing body; the second is accomplished by the director of emergency management without the initial consent of the governing body, but such declaration must be confirmed by the governing body at its next regularly scheduled meeting or at a special meeting within fourteen days of the declaration, whichever is first to occur; and

**WHEREAS**, it was necessary and proper on June 1, 2012 for the City Manager, acting as Hampton Director of Emergency Management, to declare a local emergency in



the City in the wake of the EF1 Tornado of June 1, 2012 without first obtaining the consent of the Hampton City Council (the "Council"), and confirmation by the Council is now required by law; and

**WHEREAS**, the Council is satisfied that the high winds and heavy rains and related conditions caused by the Tornado constituted a real and substantial threat to health and safety of persons and property in the City and necessitated a declaration of local emergency.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Hampton, Virginia:

1. That it hereby confirms the Declaration of Local Emergency made on June 1, 2012 by the Director of Emergency Management, and such declaration shall remain effective until the emergency conditions occasioned by the storm are declared terminated by this Council.
2. That it understands and confirms that the Declaration of Local Emergency empowered the Director of Emergency Management with special authority and duties, said authority and duties being defined by the laws, rules, regulations and plans of the United States of America, the Commonwealth of Virginia and the City of Hampton.
3. That it understands and confirms that when, in the judgment of this Council, all needed emergency actions have been taken, appropriate action to end the declared local emergency will be taken.

Ms. Bunting noted many of the speakers at the Public Comment session commented that we have a resilient community. She stated she is proud of our staff for the way they handled the immediate aftermath of the storm as well as the recovery after the storm. She was pleased to know that we live in a community where neighbors, fellow Hamptonians and staff members supported one another and helped each other, particularly in some of the areas she toured including Park Place and Merrimac Shores. She noted she was particularly impressed with staff that was able to get the City clean in time for the Pirate Festival to move forward as planned. She acknowledged the City's first responders, the Parks and Recreation staff, the Public Works Department, the media team and the Convention and Visitor Bureau (CVB) for their efforts during this time.

Ms. Bunting explained she accepted the recommendation to issue the declaration of a local emergency not because we had great devastation throughout the community, but because the devastation was so great for those communities. She further explained our past practice has been to waive permit fees for those who must rebuild due to Mother Nature; and therefore, we felt it was appropriate to continue that practice.

Councilman Stuart commented that finding out that this type of event occurred in our community is overwhelming. He commended members of the Hampton Wythe Volunteer Fire Department and the Hampton Police Department for showing up in droves and spending long hours to make the community safe. He noted he lives in Merrimac Shores; it was a difficult, emotional time realizing how much damage his neighbors and other people had suffered. He noted some homes have been

condemned and asked everyone to keep those individuals in their prayers. He added it was remarkable that there was no loss of life or major injuries.

Mayor Ward stated that her and her late mother's homes were damaged by the tornado and it was heartwarming to see the number of people who came to her home to bring coffee. She acknowledged the many volunteers including people she did not know who descended on all of the neighbors' homes in the Park Place neighborhood. She also commended staff for doing an amazing job and stated she was grateful for the support from the citizenry and that no one was injured.

**ADOPTED**

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

4. 12-0236 Ordinance Suspending Payment of Certain Fees Associated with Permits Required to Repair or Replace Property Damage Occasioned by the June 1, 2012 Tornado

Councilman Stuart requested the length of time that we expect this item to remain available to our citizens be defined.

**ADOPTED**

**Motion made by:** Vice Mayor George E. Wallace

**Seconded by:** Councilmember Ross A. Kearney, II

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

**CONSENT AGENDA**

Mayor Ward noted a request was received to pull item number 8 from the agenda. She then noted that item 6 regarding a use permit application to construct a communications tower has been withdrawn by the applicant.

Councilman Kearney asked if the information Council receives this evening from the Fire Department will affect item 11 in any way. Ms. Bunting replied "no" and explained we still need to proceed with this because it preserves a less expensive option. She further explained we have to make an immediate election as to whether we go on our own through self-insurance or if we go through the State. She said if the General Assembly were to pick up funding through the study commission, then that funding source described in the afternoon session would take care of that obligation. She noted she has made arrangements for follow up with the study committee. In response to Councilman Kearney, Ms. Bunting confirmed that the emergency staff will be kept informed about the information regarding these resolutions.

Mayor Ward asked those in the audience to refrain from talking during the meeting because the extra noise makes it difficult for those on the dais to hear the comments being made.

#### CONSENT ITEMS

5. 12-0222 Approval of the minutes from the special meeting of March 28, 2012; the April 25, 2012 afternoon session and evening special meeting; the afternoon and evening session of May 2, 2012; the afternoon, public comment and evening session of May 9, 2012; and the public comment meeting of May 23, 2012.

APPROVED items 5 through 7 and 9 through 19 on the consent agenda.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

6. 11-0194 Use Permit Application No. 1070-2011 by AT&T to construct a 120' monopole communications tower within a 60'X60' equipment compound area located at 95 Tide Mill Lane (LRSN# 7001615).

This item was withdrawn from the agenda by the applicant.

APPROVED items 5 through 7 and 9 through 19 on the consent agenda.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

7. 12-0212 Request for Refund of Erroneous Tax Abatements for 2011 and 2012

APPROVED items 5 through 7 and 9 through 19 on the consent agenda.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

A copy of the tax abatement is attached to the minutes.

8. 12-0188 Resolution Approving FY2012 3rd Quarter Budget Adjustment

**BE IT RESOLVED** by the City Council of the City of Hampton, Virginia that the attached second quarter budget adjustments pertaining to Fiscal Year 2012 be approved.

Councilman Tuck referenced an exchange of emails he had with the City Manager regarding the estimated \$1 - \$1.9 million cost of relocation and demolition of Harbor Square. He then noted that the amount of money we plan on setting aside is approximately \$2.2 million and expressed concern about the relocation aspect of it and how that is a part of the demolition.

Ms. Bunting replied this account will be a relocation and demolition account for Harbor Square. She explained when Hampton Redevelopment and Housing Authority (HRHA) initially took over the property, a relocation incentive package to place tenants into safer, better quality apartments was discussed with Council, and the majority of Council was comfortable with the relocation plan. The plan was designed to move forward with the demolition expeditiously as well as to minimize operating losses. HRHA executed it with the understanding that we would financially provide the funds necessary to cover costs not covered with income coming from rent; and therefore, the money in this account is for both demolition and relocation operating expenses.

Councilman Tuck referenced an email he sent asking if there were any costs in the month of December for HRHA which Assistant City Manager James Peterson responded to stating "no"; yet, \$198,000 worth of rent was collected that they did not have expenses on. He said he understands there were incentives based on people moving out by a certain month or time; however, he would like an explanation regarding what the cost of relocation is because he would have thought that had already taken place.

Ms. Bunting replied HRHA advanced the funds with the understanding that we would receive a bill once it was resolved. Therefore, we are putting adequate money into place to pay for the advanced funds as well as for the demolition.

Councilman Tuck asked what the cost for the relocation is. Ms. Bunting replied she did not have the exact breakdown between relocation and operating expenses with her; however, the \$2.1 million being set aside is expected to cover the entire package. She reminded everyone that we have not received the final demolition contract, so this is our best estimate based upon square footage and current City contract cost per square foot. She noted she would be happy to share the HRHA invoice with Council.

APPROVED - this item was removed from the consent agenda at the request of Councilman Tuck. The City Manager responded to his questions regarding relocation.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

The budget adjustments are attached to the minutes.

9. 12-0214 Resolution Requesting Appropriation of Additional Funds for the Mercury Boulevard and Fox Hill Road Intersection Improvement Project

**WHEREAS**, \$350,000 was initially appropriated by the City Council of the

City of Hampton, Virginia for the fiscal year 2008 capital budget on May 9, 2007, and

**WHEREAS**, the final cost of the project will be \$461,476 based on the most recent project cost estimate, and

**WHEREAS**, all project cost will be 100% reimbursable to the City of Hampton, and

**WHEREAS**, the project is now ready to enter the construction phase.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Hampton, Virginia, that \$111,476 in additional funds be appropriated for the project.

APPROVED items 5 through 7 and 9 through 19 on the consent agenda.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

10. 12-0219 Resolution Recognizing Members Of The Division Of Fire And Active Members Of The City Of Hampton's Volunteer Fire Companies And Rescue Squads As Integral Parts Of The Official Safety Program Of The City Of Hampton.

**WHEREAS**, the Charter of the City of Hampton, Chapter 9 "DEPARTMENT OF PUBLIC SAFETY", Section 9.01 establishes a division of fire; and

**WHEREAS**, the division of fire is a combination fire and rescue organization which provides for the public safety; and

**WHEREAS**, the primary purpose of the division is to save lives. The further purpose is to prevent and extinguish fires, protect property, to deliver a high level of emergency medical services, to lessen suffering, to prevent further injury and to provide mutual aid to other fire and rescue divisions should the need arise; and

**WHEREAS**, the division of fire accomplishes this purpose through career, volunteer and civilian personnel working together to meet the needs of the citizens and the mission of the organization; and

**WHEREAS**, career members of the division of fire, active members of the volunteer fire companies and active members of the volunteer rescue squads serve together as first responders to provide for the public safety and to meet the needs of the citizens of Hampton; and

**WHEREAS**, Virginia Codes § 9.1-400, the Virginia Line of Duty Act, requires that a member of any fire and/or rescue squad who perform in Hazardous Duty positions as defined by the Virginia Line of Duty Act be recognized by an ordinance or a resolution of the governing body of the City as an integral part of the official safety program of the City to meet the definition for coverage under the Virginia Line of Duty Act;

**NOW THEREFORE BE IT RESOLVED** that the City Council of the City of Hampton hereby recognizes the members of the division of fire and the active members of the following volunteer fire companies and rescue squads: Hampton Volunteer Fire Engine Company No. 1, Inc., Phoebus Volunteer Fire Company, Inc., Wythe Volunteer Fire Company Rescue Squad, Inc., Buckroe Beach Fire Company – Volunteer, Inc., Buckroe Beach Volunteer Rescue Squad, Fox Hill Volunteer Fire Company, Northampton Volunteer Fire Company #6 Inc., and Northampton Volunteer Rescue Squad as an integral part of the official safety program of the City of Hampton.

APPROVED items 5 through 7 and 9 through 19 on the consent agenda.  
**Motion made by:** Councilmember Ross A. Kearney, II  
**Seconded by:** Councilmember Will Moffett  
**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward  
**Nays:** 0  
**Absent:** 1 – Joseph H. Spencer, II

11. 12-0227 Resolution Setting Forth the City of Hampton's Irrevocable Election Not to Participate in Line of Duty Act Fund

**WHEREAS**, pursuant to Item 258 of the Appropriations Act, paragraph B, the Virginia General Assembly has established the Line of Duty Act Fund (the "Fund") for the payment of benefits prescribed by and administered under the Line of Duty Act (Va. Code § 9.1-400 et seq.); and

**WHEREAS**, for purposes of administration of the Fund, a political subdivision

with covered employees (including volunteers pursuant to paragraph B2 of Item 258 of the Appropriations Act) may make an irrevocable election on or before July 1, 2012, to be deemed a non-participating employer fully responsible for self-funding all benefits relating to its past and present covered employees under the Line of Duty Act from its own funds; and

**WHEREAS**, it is the intent of the City of Hampton to make this irrevocable election to be a non-participating employer with respect to the Fund.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA** that the City of Hampton hereby elects to be deemed a non-participating employer fully responsible for self-funding all benefits relating to its past and present covered employees under the Line of Duty Act from its own funds; and

**BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA** that the City of Hampton hereby elects to be deemed a non-participating employer fully responsible for self-funding all benefits relating to its past and present covered employees under the Line of Duty Act from its own funds; and it is further

**RESOLVED** that the following entities,

- City of Hampton Public Safety Department employees, who perform in Hazardous Duty positions as defined by the Virginia Line of Duty Act
- City of Hampton Fire Department employees who perform in Hazardous Duty positions as defined by the Virginia Line of Duty Act
- Volunteer Firefighters and Paramedics who perform in Hazardous Duty positions, as defined by the Virginia Line of Duty Act, at the following stations:
  - Hampton Volunteer Fire Engine Company No. 1, Inc.
  - Phoebus Fire Company, Incorporated
  - Phoebus Volunteer Rescue Squad
  - Wythe Volunteer Fire Company and Rescue Squad, Inc.
  - Buckroe Beach Fire Company - Volunteer, Inc.
  - Buckroe Beach Volunteer Rescue Squad
  - Fox Hill Volunteer Fire Company
  - Northampton Volunteer Fire Company #6
  - Northampton Volunteer Rescue Squad
- City of Hampton Sheriff's Department and Jail employees who perform in Hazardous Duty positions as defined by the Virginia Line of Duty Act to the best of the knowledge of City of Hampton, constitute the population of its past and present covered employees under the Line of Duty Act; and it is further

**RESOLVED** that, as a non-participating employer, the City of Hampton agrees that it will be responsible for, and reimburse the State Comptroller for, all Line of Duty Act benefit payments (relating to existing, pending or prospective claims) approved and made by the State Comptroller on behalf of the City of Hampton on or after July 1, 2010; and it is further

**RESOLVED** that, as a non-participating employer, the City of Hampton agrees that it will reimburse the State Comptroller an amount representing reasonable costs

incurred and associated, directly and indirectly, with the administration, management and investment of the Fund; and it is further

**RESOLVED** that the City of Hampton shall reimburse the State Comptroller on no more frequently than a monthly basis from documentation provided to it from the State Comptroller.

APPROVED items 5 through 7 and 9 through 19 on the consent agenda.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

12. 12-0220 Resolution Approving the City of Hampton, Virginia's Participation and Appropriation of the 2012-2013 Early Intervention Services for Infants and Toddlers with Disabilities and Their Families Contract Amendment, Part C of the Individual with Disabilities Education Act.

**WHEREAS**, the Department of Behavioral Health and Developmental services (DBHDS) has awarded the City of Hampton, Part C funds on behalf of the Infant and Toddler Connection of Hampton Newport News (formerly named the Hampton-Newport News Interagency Coordinating Council) in the amount of \$165,137 in federal funds and \$153,947 in state funds for a total award of \$319,084; and

**WHEREAS**, the grant period covers July 1, 2012 through June 30, 2013; and

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Hampton, Virginia accepts and appropriates the Early Intervention Services for Infants and Toddlers with Disabilities and Their Families contract amendment in the amount of \$319,084 and any related supplemental funding by the Department of Behavioral Health and Developmental Services in accordance with the contract.

**BE IT FURTHER RESOLVED**, that the City authorizes the City Manager to take the necessary steps to implement this grant award.

APPROVED items 5 through 7 and 9 through 19 on the consent agenda.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

13. 12-0221 Resolution Accepting and Appropriating Funds for the Hampton Clean City commission from the Department of Environmental Quality, Solid Waste Fund, Stormwater Fund and the General Fund.



**WHEREAS**, the Hampton Clean City Commission is awaiting notification from the Virginia Department of Environmental Quality on their allocation amount for the litter prevention program, estimated to be up to \$25,000; and

**WHEREAS**, \$55,000 from the Solid Waste Fund, \$25,600 from the Stormwater Fund, and \$56,966 from the General Fund have been awarded to the Clean City Commission; and

**WHEREAS**, the grant award covers the period July 1, 2011 through June 30, 2012;

**WHEREAS**, it is anticipated that \$5,000 in donations from the Keep Hampton Green Fund will be received on behalf of Commission urban forestry activities;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Hampton accepts and appropriates an amount up to \$5,000 from Keep Hampton Green donations, an amount up to \$25,000 from the Virginia Department of Environmental Quality, \$55,000 from the Solid Waste Fund, \$25,600 from the Stormwater Fund, and \$56,966 from the General Fund for a total of up to \$167,566, and any additional funds awarded from these sources in accordance with the grant agreement.

**BE IT FURTHER RESOLVED** that the City Council of the City of Hampton authorizes the City Manager to take the necessary steps to implement this grant award.

APPROVED items 5 through 7 and 9 through 19 on the consent agenda.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

14. 12-0232 Resolution: Virginia Retirement System Employer Contribution Rates for Counties, Cities, Towns, School Divisions and Other Political Subdivisions

(In accordance with the 2012 Appropriation Act Item 468(H))

**BE IT RESOLVED**, that the City of Hampton 55207 does hereby acknowledge that its contribution rates effective July 1, 2012 shall be based on the higher of a) the contribution rate in effect for FY 2012, or b) seventy percent of the results of the June 30, 2011 actuarial valuation of assets and liabilities as approved by the Virginia Retirement System Board of Trustees for the 2012-14 biennium (the "Alternate Rate") provided that, at its option, the contribution rate may be based on the employer contribution rates certified by the Virginia Retirement System Board of Trustees pursuant to Virginia Code § 51.1-145(I) resulting from the June 30, 2011 actuarial value of assets and liabilities (the "Certified Rate"); and

**BE IT ALSO RESOLVED**, that the City of Hampton 55207 does hereby certify to the Virginia Retirement System Board of Trustees that it elects to pay the following contribution rate effective July 1, 2012:

(Check only one box)

- ☒ The Certified Rate of 18.57%
- ☐ The Alternate Rate of 15.34%; and

**BE IT ALSO RESOLVED** that the City of Hampton 55207 does hereby certify to the Virginia Retirement System Board of Trustees that it has reviewed and understands the information provided by the Virginia Retirement System outlining the potential future fiscal implications of any election made under the provisions of this resolution; and

**NOW, THEREFORE,** the officers of City of Hampton 55207 are hereby authorized and directed in the name of the City of Hampton to carry out the provisions of this resolution, and said officers of the City of Hampton are authorized and directed to pay over to the Treasurer of Virginia from time to time such sums as are due to be paid by the City of Hampton for this purpose.

**CERTIFICATE**

I, Katherine K. Glass, Clerk of the City Council of the City of Hampton, certify that the foregoing is a true and correct copy of a resolution passed at a lawfully organized meeting of the City of Hampton held at Hampton, Virginia at 7 p.m. on June 13, 2012.

Given under my hand and seal of the City of Hampton this 14<sup>th</sup> day of June, 2012.

\_\_\_\_\_  
Clerk of Council

APPROVED items 5 through 7 and 9 through 19 on the consent agenda.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

15. 12-0233 Resolution: Virginia Retirement System Member Contributions by Salary Reduction for Counties, Cities, Towns, and Other Political Subdivisions (In accordance with Chapter 822 of the 2012 Acts of Assembly (SB497))

**WHEREAS,** the City Of Hampton 55207 employees who are Virginia Retirement System members who commence or recommence employment on or after July 1, 2012 ("FY2013 Employees" for purposes of this resolution), shall be required to contribute five percent of their creditable compensation by salary reduction pursuant to Internal Revenue Code § 414(h) on a pre-tax basis upon commencing or recommencing employment; and

**WHEREAS**, the City Of Hampton 55207 employees who are Virginia Retirement System members and in service on June 30, 2012, shall be required to contribute five percent of their creditable compensation by salary reduction pursuant to Internal Revenue Code § 414(h) on a pre-tax basis no later than July 1, 2016; and

**WHEREAS**, such employees in service on June 30, 2012, shall contribute a minimum of an additional one percent of their creditable compensation beginning on each July 1 of 2012, 2013, 2014, 2015, and 2016, or until the employees' contributions equal five percent of creditable compensation; and

**WHEREAS**, the City Of Hampton 55207 may elect to require such employees in service on June 30, 2012, to contribute more than an additional one percent each year, in whole percentages, until the employees' contributions equal five percent of creditable compensation; and

**WHEREAS**, the second enactment clause of Chapter 822 of the 2012 Acts of Assembly (SB497) requires an increase in total creditable compensation, effective July 1, 2012, to each such employee in service on June 30, 2012, to offset the cost of the member contributions, such increase in total creditable compensation to be equal to the difference between five percent of the employee's total creditable compensation and the percentage of the member contribution paid by such employee on January 1, 2012.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA** that the City Of Hampton 55207 does hereby certify to the Virginia Retirement System Board of Trustees that it shall effect the implementation of the member contribution requirements of Chapter 822 of the 2012 Acts of Assembly (SB497) according to the following schedule for the fiscal year beginning July 1, 2012 (i.e., FY2013):

Type of Employee	Employer Paid Member Contribution	Employee Paid Member Contribution
Plan 1	0%	5%
Plan 2	0%	5%
FY2013 Employees	0%	5%

(Note: Each row must add up to 5 percent.); and

**BE IT FURTHER RESOLVED**, that such contributions, although designated as member contributions, are to be made by the City Of Hampton in lieu of member contributions; and

**BE IT FURTHER RESOLVED**, that pick up member contributions shall be paid from the same source of funds as used in paying the wages to affected employees; and

**BE IT FURTHER RESOLVED**, that member contributions made by the City Of Hampton 55207 under the pick up arrangement shall be treated for all purposes other than income taxation, including but not limited to VRS benefits, in the same manner and to the same extent as member contributions made prior to the pick up arrangement; and

**BE IT FURTHER RESOLVED**, that nothing herein shall be construed so as to permit or extend an option to VRS members to receive the pick up contributions made by the City of Hampton directly instead of having them paid to VRS; and

**BE IT FURTHER RESOLVED**, that notwithstanding any contractual or other provisions, the wages of each member of VRS who is an employee of the City Of Hampton shall be reduced by the amount of member contributions picked up by the City Of Hampton on behalf of such employee pursuant to the foregoing resolutions.

**NOW, THEREFORE**, the officers of City of Hampton 55207 are hereby authorized and directed in the name of the City Of Hampton to carry out the provisions of this resolution, and said officers of the City Of Hampton are authorized and directed to pay over to the Treasurer of Virginia from time to time such sums as are due to be paid by the City Of Hampton for this purpose.

**CERTIFICATE**

I, Katherine K. Glass, Clerk of the City Council of the City of Hampton, certify that the foregoing is a true and correct copy of a resolution passed at a lawfully organized meeting of the City of Hampton held at Hampton, Virginia at 7 p.m. on June 13, 2012.

Given under my hand and seal of the City of Hampton this 14<sup>th</sup> day of June, 2012.

\_\_\_\_\_  
Clerk of Council

APPROVED items 5 through 7 and 9 through 19 on the consent agenda.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

16. 12-0235 Resolution: City of Hampton Concurrence with School Division Electing to Pay the Virginia Retirement System Board-Certified Rate  
(In accordance with the 2012 Appropriation Act Item 468(H))

**BE IT RESOLVED**, that the City of Hampton 55207 does hereby acknowledge that the Hampton City Schools 40207 has made the election for its contribution rate to be based on the employer contribution rates certified by the Virginia Retirement System Board of Trustees pursuant to Virginia Code § 51.1-145(I) resulting from the June 30, 2011 actuarial value of assets and liabilities (the "Certified Rate"); and

**BE IT ALSO RESOLVED**, that the City of Hampton 55207 does hereby certify to the Virginia Retirement System Board of Trustees that it concurs with the election of the

Hampton City Schools 40207 to pay the Certified Rate, as required by Item 468(H) of the 2012 Appropriation Act; and

**NOW, THEREFORE**, the officers of the City of Hampton 55207 are hereby authorized and directed in the name of the City of Hampton to execute any required contract to carry out the provisions of this resolution. In execution of any such contract which may be required, the seal of the City of Hampton, as appropriate, shall be affixed and attested by the Clerk.

**CERTIFICATE**

I, Katherine K. Glass, Clerk of the City Council of the City of Hampton, certify that the foregoing is a true and correct copy of a resolution passed at a lawfully organized meeting of the City of Hampton held at Hampton, Virginia at 7 p.m. on June 13, 2012.

Given under my hand and seal of the City of Hampton this 14<sup>th</sup> day of June, 2012.

\_\_\_\_\_  
Clerk of Council

APPROVED items 5 through 7 and 9 through 19 on the consent agenda.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

17. 12-0248 Resolution Amending Resolution No. 09-0286, Adopted July 8, 2009, Which Authorized The Execution and Delivery of a Master Equipment Lease Purchase Agreement and Related Documents to Increase The Purchase Limit Under That Agreement From \$2.3 Million to \$7 Million To Finance The Purchase Of Fire Trucks Under The Terms Of The Current Agreement

**WHEREAS**, the City of Hampton (the "City"), on behalf of itself and Hampton City Schools, solicited proposals for lease/purchase financing to finance a portion of the cost of current and future equipment needs essential to the City's operations;

**WHEREAS**, SunTrust Equipment Finance & Leasing Corp. ("SunTrust Leasing") was selected to provide the lease/purchase financing pursuant to a Master Lease Purchase Agreement (the "Agreement"), the form of which was presented to the City Council for prior approval in 2009 and so approved by Resolution No. 09-0286, attached;

**WHEREAS**, Council initially approved purchases under the Agreement limited to \$2.3 million and the City Manager now recommends an increase to the purchase limit

to permit purchases under the favorable terms of the Agreement up to \$7 million before the Agreement expires in July, 2012.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAMPTON AS FOLLOWS:**

1. **Authorization of Equipment Lease Purchase Agreement; Essentiality.** The form of the Agreement submitted to this meeting having been previously approved by this Council, the City Manager is authorized to execute and deliver any necessary amendments to the Agreement, with such completions, omissions, insertions and changes that are not inconsistent with this Resolution, to permit equipment purchases up to \$7,000,000 (seven million dollars). The equipment to be financed under the Agreement shall be only equipment that is essential to the operations of the City and which is expected to remain essential to such operations during the term of the Agreement as certified by the appropriate City officials.

2. **Terms of Agreement.** The final pricing terms of the Agreement shall be satisfactory to the City Manager; provided, however, that (a) the purchase price or principal component of all rental payments thereunder shall not exceed \$7,000,000 (b) the annual rate of interest shall be determined as set forth in the Agreement, and in no event shall exceed 6.0%, (c) the rental payments due under the Agreement shall be payable annually in approximately equal quarterly installments over a term for each lease/purchase financing under the Agreement not to exceed 10 years.

3. **Subject to Appropriation.** The obligations of the City under the Agreement shall be limited obligations payable solely from funds to be appropriated by the City Council for such purpose and shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit of the City beyond any fiscal year for which the City Council has lawfully appropriated funds from time to time. Nothing herein or in the Agreement shall constitute a debt of the City within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit or taxing power of the City.

4. **Annual Budget.** The City Council believes that funds sufficient to make payment of all amounts payable under the Agreement can be obtained. While recognizing that it is not empowered to make any binding commitment to make such payments beyond the current fiscal year, the City Council hereby states its intent to make annual appropriations for future fiscal years in amounts sufficient to make all such payments and hereby recommends that future City Councils do likewise during the term of the Agreement. The City Council directs the City Manager, or such other officer who may be charged with the responsibility for preparing the City's annual budget, to include in the budget request for each fiscal year during the term of the Agreement an amount sufficient to pay all amounts coming due under the Agreement during such fiscal year.

5. **Tax Compliance and Arbitrage Covenants.** The City covenants that it shall not take or omit to take any action the taking or omission of which will cause the interest attributable to the rental payments under the Agreement to be "arbitrage bonds," within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, (the "Code"), or otherwise cause the interest components of the rental payments due under the Agreement to be includable in the gross income for federal

income tax purposes of the registered owners thereof under existing law. Such officers of the City as may be requested are authorized and directed to execute such tax compliance certificates, as may be necessary to demonstrate compliance with this paragraph.

6. **Other Actions.** The City Manager and such other officers and agents of the City as may be designated by City Manager are authorized and directed to take such further actions as they deem necessary regarding the execution and delivery of an amended Agreement including, without limitation, the execution and delivery of closing documents and certificates including, an Escrow Deposit Agreement with SunTrust Bank, IRS Form 8038-G, a Non-Arbitrage Certificate and a Tax Certificate. All such actions previously taken by the City Manager or such officers and agents are hereby approved, ratified and confirmed.

7. **Effective Date.** This Resolution shall become effective immediately upon adoption.

APPROVED items 5 through 7 and 9 through 19 on the consent agenda.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

18. 12-0210 An Ordinance to Amend and Re-enact Article III, Chapter 34 of the Code of the City of Hampton, Virginia Entitled "Encroachments into Public Streets and Other Public Ways, Places or Property" by Amending Section 34-86 Pertaining to Applications to Require Submission to the Public Works Department.

APPROVED items 5 through 7 and 9 through 19 on the consent agenda.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

19. 12-0224 Ordinance To Amend And Reenact Chapter 5 "Animals", Of the Code Of The City Of Hampton, Virginia Section 5-42 "Control Of Dangerous And Vicious Dogs; Penalties" To Comply With The State Code Regarding Reporting To The Dangerous Dog Registry And Collection Of Fees Due To The State Veterinarian For The Maintenance Of The Virginia Dangerous Dog Registry.

APPROVED items 5 through 7 and 9 through 19 on the consent agenda.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Will Moffett

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

**PRESENTATIONS, PROCLAMATIONS, AWARDS**

**PUBLIC HEARINGS**

**REZONINGS**

20. 12-0216 Ordinance to amend and re-enact chapter 3.1 entitled "R-33 District One Family Residence District", chapter 3.2 entitled "R-22 District One Family Residence District", chapter 3.3 entitled "R-43 District One Family Residence District" and chapter 3.4 entitled "R-LL District One Family Residence District" of the Zoning Ordinance of the City of Hampton, by deleting sections 3.1-10, 3.2-10, 3.3-10 and 3.4-10 pertaining to administrative corrections.

Ms. Bunting stated this is a housekeeping issue to comply with the current State Code requirement. The Planning Commission recommends approval.

Mayor Ward stated that no citizens had signed up to speak at the Public Hearing and called for anyone from the audience who wished to speak. As there were no speakers, Mayor Ward closed the Public Hearing.

HELD PUBLIC HEARING - there were no speakers on this item.

APPROVED

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Christopher G. Stuart

**Aye:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nay:** 0

**Absent:** 1 – Joseph H. Spencer, II

21. 12-0218 Rezoning Application No. 1302-2012 by The Rebkee Partners Aberdeen, LLC to rezone 1.97+ acres on the southwestern corner of the intersection of W. Mercury Boulevard and Aberdeen Road (LRSNs 3003444, 3003445, 3003452, 3003453) from Limited Commercial (C-2) District and One Family Residence (R-11) District to conditional C-2 for a convenience store and gas supply station.

Ms. Bunting introduced Senior City Planner Mr. Donald Whipple to brief Council on the rezoning application. A copy of the presentation is attached to the minutes.

Mr. Whipple greeted the Mayor and members of Council. He then described the location of the site as being on the corner of Aberdeen Road and West Mercury Blvd. as indicated by the red star on slide 3 of the presentation. He noted slide 4 shows a picture of the entire site for consideration.

Mr. Whipple reviewed slides 5 and 6 of the presentation showing the existing and proposed zoning.



Mr. Whipple stated public policy is given to us from the Community Plan, and noted that this site is within the Coliseum Central Master Plan boundaries, specifically the Power Plant Parkway initiative. Additional information regarding the public policy is listed on slide 7 of the presentation.

Mr. Whipple gave a timetable of the community meetings held. The concept was introduced to the Aberdeen Community in June of 2011. Once details became clearer, a follow up meeting was held in February 2012. Since the Planning Commission meeting, a third community meeting facilitated by a neutral third party was held. The third party aided in the discussion between the differing opinions within the community.

Mr. Whipple noted that staff has received three additional emails from business individuals in the area all of which were in support of the project. Clerk of Council Ms. Katherine Glass handed copies of the emails to the members of Council.

Mr. Whipple reviewed the proffered conditions listed on slide 9 of the presentation. A copy of the proffer statement and conditions is attached to the minutes.

Mr. Whipple noted Slide 10 of the presentation shows the site plan including the new greenery and gas pumps. Councilman Kearney asked when patrons turn off of Mercury Blvd. onto Aberdeen Road to enter the Wawa, will they be entering at the back end of the property? Mr. Whipple replied yes, and added a traffic study was conducted by the applicant and was reviewed by our City traffic engineering staff. It was determined that all three entrances are located as far back from the intersection as safely possible. A turning lane was also recommended because there are dual lefts from Mercury Blvd. onto Aberdeen and can quickly get the right turn movement out of the traffic of Aberdeen Road.

Councilman Kearney asked if the Tidewater AAA is across from the site. Mr. Whipple replied yes and noted he wasn't certain of exactly where the entrance falls since it is off of the slide.

Councilman Moffett commented residents have expressed concern that traffic may use Greenwood Drive as a cut through and asked if there has been any consideration given to making a portion of it a cul-de-sac. Mr. Whipple stated not with respect to Greenwood Drive and called upon Signal Systems Engineer Mr. John Yorks to give comments.

Mr. Yorks explained the cul-de-sac idea has been considered; however, his concern is a right-of-way would be required and we would have to purchase people's property on Greenwood Drive which is something we would not want to do for this purpose. He expressed concern about the adjoining neighborhood which has a grid pattern associated with it which allows multiple ingress and egress points in and out of the neighborhood. This disperses the traffic. We got away from this design over the years and began putting cul-de-sacs in neighborhoods which concentrates traffic flows on one major street which was not fair to the residents on those streets. Therefore, we have been trying to maintain multiple accesses in new developments to avoid concentrating flows resulting in more traffic on one street than others.

Vice Mayor Wallace asked Mr. Yorks to clarify if he meant there are multiple entries into Greenwood. Mr. Yorks explained there are multiple entrances to Mercury Blvd. from the neighborhood. Greenwood parallels Mercury and goes to Gumwood Drive and Big

Bethel Road; however, in between Greenwood and Mercury, there are nine streets which connect those two which disperse traffic flows rather than concentrate it.

Vice Mayor Wallace asked if this means customers can access the Greenwood entry into the complex by coming down multiple streets. Mr. Yorks agreed and added people can come out of the neighborhood onto Mercury Blvd. and access the Wawa off of Mercury Blvd. Mr. Yorks noted he would not expect everybody to come down Greenwood to get to the Wawa.

Vice Mayor Wallace said the concern is the amount of traffic from people who don't live in the neighborhoods who may access Wawa by coming down Weaver Road and turning into Greenwood Dr. Mr. Yorks replied there are established traffic patterns in the neighborhood, and most of the traffic generated is from people who stop by the store on their way to other destinations versus people who get in their cars just to go to a convenience store.

Vice Mayor Wallace explained his concern is that the Wawa may generate demand and an increase in destination traffic. Mr. Yorks noted traffic data and the study done by the developer have historically shown that not all trips to this type of store are new trips; instead, 60% are existing trips.

Mr. Whipple continued his presentation pointing out on slide 10 that there is a heavily landscaped area with trees, shrubs and landscape berms to help mitigate any impact to the immediately adjacent residences.

At Councilman Moffett's request, Mr. Whipple addressed how lighting impacts the residents in the adjacent area. Mr. Whipple explained there is proffered lighting and we have required all site lighting to be inward and downward facing the site. The exterior will have all LED fixtures which are more concentrated to an area and offer less glare and spill over than traditional lighting.

Councilman Tuck referenced a conversation he had with the applicant, Mr. Larry Cumming, who stated he did not think many people would come down Greenwood Drive to access Wawa. Councilman Tuck asked how the project would be impacted if the entrance/exit on Greenwood Drive was closed. Mr. Whipple noted from a planning standpoint, we prefer any type of cross connections from one commercial property to another; however, that question may be better answered by the traffic experts and the applicant.

Mayor Ward recommended Mr. Yorks address the question. Mr. Yorks said the applicant may want to address how it will impact his internal operation; however, the study the applicant provided shows there would be little to no traffic that goes back through the neighborhood meaning there will be a lot of traffic on Aberdeen Rd. and Mercury Blvd. He added their study results also showed they would move these entrances out of the influence of the major intersection of Mercury Blvd. and Aberdeen Rd.

In response to Mayor Ward, Mr. Yorks summarized the impact to the Wawa traffic pattern should the entrance on Greenwood Drive be cut off. Mr. Yorks noted the applicant should describe how it would impact them specifically; however, in his opinion, it would not impact the traffic flow much differently than what was shown in the study.

Mayor Ward asked if the point is to get back and forth across Greenwood, is that entrance necessary? Mr. Yorks stated in his opinion, it is not.

Vice Mayor Wallace asked Mr. Yorks if he agreed with the conclusions drawn by the traffic study. Mr. Yorks replied yes.

Mr. Whipple continued his presentation. The building elevations, as shows on slides 11-13 of the presentation are a standard prototype on the interior; however, it is specifically designed for Hampton for this site. It is an all brick, red building with stone accents around the water table, and the gas canopy which match the building.

Mr. Whipple concluded his presentation stating based on the merits of the land use, the policy and the high quality site design and building elevation, staff continues to recommend this application be approved with the proffered conditions.

Mayor Ward reiterated the reason we are here is because of the two residential lots near the site; otherwise, it is already zoned.

Ms. Bunting noted when the Planning Commission heard the action, the Planning Commission recommended denial because they largely heard oppositional speakers at that time.

At Councilman Kearney's request, Mr. Whipple reviewed the slide showing what is currently at the location. Councilman Kearney expressed concern regarding the two pieces of residential property being occupied by commercial interests. After reviewing the slide again, Councilman Kearney noted he thought the properties were on the front side; however, Mr. Whipple clarified they are not.

Councilman Moffett asked if no action was taken, is it legally possible to build a Wawa with a smaller footprint? Mr. Whipple said that question has been raised and Wawa said no; however, if they could physically get it on a C2, legally, it would be allowed by right.

Mr. Larry Cumming, applicant representative and an attorney in the City of Hampton, 2236 Cunningham Drive, made the following statement: I am excited to be here this evening on behalf of the applicant, Rebkee Partners. Many of the people in the City are familiar with them. They have built a number of properties here. The operator of the facility will be Wawa, another very first class operator. I hope all of you have had the opportunity to visit their location in Newport News. They are what I would consider the whole foods and fresh market version of the convenience store industry. I am also happy to be here because after the Planning Commission meeting, there was a meeting of the Aberdeen Gardens community last Saturday. That community voted in favor of this application and will recommend that to you. The majority of the community in the Greenwood neighborhood where the residential homes are signed a document that permitted those two residential homes to be utilized for commercial purposes. Without that document, we could not be here. Even if you rezoned it, the private restrictive covenants would have required that they be utilized for residential purposes. That community has agreed to permit those to be utilized for commercial purposes. We have both the Aberdeen community voting in favor and the Greenwood Farms community approving this change. At the front end of this, we have presented to the Clerk a document with over 1,000 signatures that have been gathered in the last week asking you to vote in favor of this application.

Mayor Ward noted it was her understanding that the Aberdeen Gardens vote was split evenly amongst the dues paying members, and it was the non-dues paying members which made it a majority vote in favor. Mr. Cumming agreed and added that the dues paying members of the historic district was an even split; however, the general Aberdeen community represented at that meeting voted in favor.

Mr. Cumming introduced Wawa representative Mr. Ted Yost to present Council with an introduction to the company itself. A copy of the presentation is attached to the minutes.

Mr. Yost greeted Council, stated he is a Real Estate Engineer employed by Wawa, and gave the following introduction to the company for those who may not be familiar with Wawa's story and how it is different from other convenience store retailers: Wawa started roughly 200 years ago. The Wood family, the primary interest in our company, was involved in the steel industry and in the early 1900's got involved in the dairy industry. In 1964, we opened our first convenience store heading toward the model that you know today. It was a spin-off of the dairy business. They had home milk and dairy products delivery. All of those customers said it would be great if we could buy it ourselves in your store. We opened an early version of a small convenience store with dairy, groceries, cold cuts, cheeses and other items. We have expanded our offer and now have around 600 stores, approximately 300 of which are the business model you see today which is the convenience store with the gasoline offer. We operate presently in the five states listed on slide 8 of the presentation. We are privately held. We own and operate every one of our stores with company employees. The associates have about a 29% interest in the company through the Employee Stock Ownership Plan (ESOP). Our vision is that we want to be the world's most appetizing convenience retailer. We have expanded our offer from the grocery items, which we still continue to offer, to fresh and healthy items. We have salads, made to order hoagies, coffee, frozen beverages, baked goods and breakfast items.

Mr. Yost continued his statement. As a company, corporately we are involved in a lot of charities on the national level. We raise funds for juvenile diabetes and the Red Cross. We donate to the local food banks and children's hospitals. Most currently, we have a promotion for the benefit of the USO. Managers are given discretionary funds to support little league teams, youth programs and other things in their back yard where they operate and support the customers' needs as well. We dedicate time and participate in local charities; it is not just a monetary contribution, but a time contribution for the charities we believe in.

Mr. Yost noted that was a high level overview of the company for those who were not familiar with them.

Councilman Moffett stated he was impressed by the corporate sponsorship and citizenship. He referenced the mentioned discretionary funds to support the local community and asked if any discussions have taken place between Wawa and the Aberdeen surrounding community regarding its historic district as well as its little league and how it can support the community. Mr. Yost replied no. Mr. Cumming added corporately, this was a discussion which evolved around negotiating and dealing with the neighborhood on this site. Mr. Cumming continued stating City representatives thought it would be a good idea to have an entrance feature to the Aberdeen neighborhood including a signage and entrance feature for the Aberdeen neighborhood; however, the

Aberdeen group indicated they already had signage and it was something they did not want although it was offered by the applicant. Mr. Cumming noted the applicant said if we were willing to spend the money to provide signage, we will also be willing to contribute those funds to your organization in lieu of the signage. Mr. Cumming said he believes Wawa is committed to helping the neighborhood in kind and financially.

Mayor Ward noted numerous citizens signed up to speak and since there are other matters on the agenda, we need to move forward with the rezoning portion of the item.

Mr. Cumming continued his presentation and referred to slide 11 of the presentation showing the location of the site which is not technically within the Aberdeen district; instead it is in the Greenwood Farms district/subdivision. He noted Wawa has voluntarily abided by and will comply with the Coliseum Central Business Improvement District standards. This project will cost between \$5.5 to \$6 million. Mr. Cumming briefly reviewed some of the remaining slides on the presentation. Mr. Cumming stated a traffic engineer was present to address the traffic issue.

Mr. Carroll Collins, Kimley-Horn and Associates, 4500 Main Street, Virginia Beach, Va. 23462, Transportation Planner who worked on the traffic assessment study reported the following: (1) vehicle operations delay at the intersection of Mercury Blvd. and Aberdeen Rd. remain unchanged as it relates to the level of service during the peak periods. (2) only limited movements will experience delays that exceed approximately one minute. (3) recent crash data discussed with the City shows no crashes have been observed or recorded at the CVS and/or AAA entrances. The Institute of Transportation Engineers shows 60-65% of the traffic already on the road drives by the site today.

Mr. Collins reviewed additional traffic related data listed on slides 17-22 of the presentation.

Mayor Ward asked Mr. Collins to address Councilman Tuck's previous question about how important is the cut through on Greenwood because our engineer stated it was not essential. Mr. Collins replied the driveway to Greenwood is not a critical component to the site and its success. Residents in Greenwood would now not have the convenience of that access driveway directly to Greenwood to make the right rather than having to go to Mercury Blvd. to turn right and right again into the site. He added there has been discussion about partial access modification of the driveway along the lines of a right-in, right-out allowing the left-in such that if you are coming off of Mercury Blvd. and want to access the site, you have the opportunity to do so versus not being able to access the driveway after you have committed to making the movement. He clarified, it going away completely is not detrimental to the site; however there is a convenience factor to the residents that may try to access it off of Greenwood and there is the partial access component that may be discussed along the way.

In response to Councilman Tuck, Mr. Collins stated approximately 50,000 vehicles travel on Mercury Blvd. to the West of Aberdeen Rd. per day; and, to the east of Aberdeen Rd. it is approximately 60,000 vehicles per day.

Councilman Tuck referenced the slide regarding traffic which shows 60-65% of the customers that Wawa attracts are cars already in the area; however, there is 35-40% of new traffic that will be on Aberdeen Rd. or coming from Mercury Blvd. going to Wawa that are possibly new trips. Mr. Collins agreed and clarified when the calculations are

done, they do trip generation for that specific land use. For example, the total number of trips that may be destined for this land use is 6,000 driveway trips over the course of the day, 3,600 – 4,000 are already driving by the site. Of the 50,000 to 60,000, 4,000 of those are driving by the site that might come to the site and go on their way meaning there is the potential that 2,000 new trips would be introduced to the stream of traffic already passing by the site today.

Mr. Cumming made additional remarks. The entrances are being reduced on all sides. There is no detrimental effect to the function of Mercury Blvd. or any of the roadways is the conclusion that all of the traffic studies including the City of Hampton have come to. There is a dedicated right turn lane into the site which will avoid any back up on the turning movements into the site from Aberdeen Road. The traffic issues that the public will mention already exist because this is a major intersection and is one of the largest intersections we have in the City.

Mr. Cumming stated Council heard the explanation of the pros and cons regarding the Greenwood Dr. entrance. One possibility is to permit a right-in, right-out and potentially a left-in which would prevent anyone who wants to go west on Mercury Blvd. from coming out of the site and going through the neighborhood to go west. This provides an easy construction restraint that will serve the community by permitting them to be there while preventing anyone from traveling through the community to get away from and go west on this property. In his opinion, this could be a solution to the issue on Greenwood Dr.

Councilman Stuart expressed concern that this right-in, right-out may expand the amount of asphalt and worsen the view of the residential home which overlooks this landscaping. Mr. Cumming replied it will not and added the construction of the entrance will be so that you cannot turn left coming out of it. You can come in right and go out right and you can turn left into the site; however, the turning movement that is prohibited is left turn out so that you cannot leave the site and go west through the Greenwood neighborhood. He added it will not change anything and will be the exact footprint provided to Council.

Mayor Ward asked if the applicant will commit to not only the berm, but also the privacy fence between the back of the property and the Greenwood neighborhood and other landscaping to make it more attractive. Mr. Cumming replied yes and stated that is what the applicant initially proposed; however, the Planning Department thought a see-through fence would be better. Mr. Cumming reiterated the applicant is more than happy to do that. Mayor Ward noted you would need to work with the property owners. Vice Mayor Wallace stated he does not want to dictate how that will look and would rather leave that to the Planning Department and neighborhood to decide. Mr. Cumming noted if requested and desired, the applicant would absolutely do it.

Mr. Cumming addressed store safety. He stated safety is very important to Wawa; the store is always manned by more than one person; all staff is equipped electronically in order to immediately report suspicions to the police; there is zero tolerance for misconduct and loitering; all areas are lighted and security monitored.

Mr. Cumming said this is about land use. Only a portion of the site is single family residential. The rest of the site and the rest of the corners of this intersection are already zoned C-2. This makes sense from a land use standpoint because it is on Mercury Blvd.

which is the primary commercial and largest road in our City which intersects another major roadway; it is also the gateway to our primary commercial area and they are agreeing to abide by all of the design criteria required.

Mr. Cumming listed additional positive aspects of doing the project as (1) full time and part time employees provided they work 20 hours per week receive full benefits. (2) \$59,000 in real estate tax money for the City and approximately \$400,000 - \$500,000 in other taxes such as cigarette, meals and sales. He concluded his comments stating this is a great amount of benefit to the community and it is a gateway to the Coliseum area. He then noted the site was previously a Rich's grocery store and this project will take it back to what it was originally.

Councilman Stuart noted eating nutritiously as possible can be challenging in a world of fast food. He said we have had presentations about obesity related challenges within our community and the ability to stop somewhere to eat something healthy shows Wawa has made a commitment to having those options available along with other traditional convenience store options. Mr. Cumming agreed with Councilman Stuart's comments and added Wawa is more than a convenience store and is more of a hybrid of a convenience store and grocery store which has made to order food that people love.

Mayor Ward noted that this has been a long evening, and asked everyone to remain quiet and respectful to each other in order to get through this portion of the meeting quickly. She stated approximately 30 people signed up to speak; and therefore, asked the speakers to summarize their points and/or simply let us know whether they are for or against it since many points have already been made, Council has heard from both staff's position and Mr. Cumming's position, and previous comments prior to this evening have been heard. She further noted that due to the late hour, it would be greatly appreciated if everyone did not use their full three minutes of speaking time; however, everyone is entitled to speak for the full three minutes if they choose.

#### **PUBLIC HEARING:**

Mr. William Hardy, 12 Greenwood Drive, greeted the members of Council and made the following statement: To the Mayor, I am totally against this. One of the topics was - no left turn back out. That is not a good idea. What about the community which stays back there? Someone from Tallwood may come out to get milk and have to come all the way around to Mercury Blvd. or Aberdeen Rd. just to get back home which is not convenient. The whole topic is misleading. We came before the Planning Commission several weeks before and they denied it. It wasn't that they were influenced by the neighbors or support we have here; instead, it isn't what we want. We don't need a Wawa. It is misleading to people who don't know. They act like they are for us, but they are not. They talk about cleaning and the Police in Greenwood. They are not talking about brightening up Greenwood. Everything they are talking about is about Wawa and how they get something out of it. We are not getting anything. The average person will get a hot dog and a cup of coffee, and by the time they finish, they will throw the trash out the window and we will be picking it up. Even if you put a cul-de-sac there, the few houses that are stuck there will still have to come out of Greenwood, and turn right on Mercury Blvd. I work in the shipyard, so a cul-de-sac and the all night traffic is not going to convenience me. They (truck drivers) come in the middle of the night to refuel their tanks making loud noises and having the lights on 24/7. What's there now: a church

where people only come on Sunday or Wednesday. It is not convenient for us, period. We are not for it.

Mr. Hardy asked those in the audience who were for this to raise their hands and stated only about 10 people raised their hands. He then asked those who were against this to raise their hands. Numerous hands were raised.

Mr. Hardy continued his statement. They are misleading us telling us they have all of these signatures. How did you get all of those signatures when all of these people are here saying no?

Comments were being made from the audience; therefore, Mayor Ward informed those speaking from the audience that their behavior was disrespectful. She then asked Mr. Hardy where his residence is in relation to the site. Mr. Hardy replied he would be at the cul-de-sac and he feels if it isn't broke, don't fix it because it is not convenient for him. Mayor Ward asked Mr. Hardy to explain to Council where he lives in relation to the proposed store site. He replied his residence is where they would put the cul-de-sac at the curb which will only bring more traffic. He then said people in the community may be aware that the curb is sharp but others won't.

Mr. Dwight Sawyers, 618 Smith Street, made the following statement: I am a small business owner in Hampton called Uncle Dwight's Incense. I feel like I am probably the smallest business person in this room. However, by this establishment coming to this area, it won't shut me down. I've worked very hard here lately and am in about 55 stores in the Hampton Roads area. The bulk of my business is on Mercury Blvd. I am questioning – is this selfish of me? I am listening to all of this information. It benefits one group, but it knocks another group down. I look out in this audience and have established a relationship with a lot of these people. A lot of these people will become invisible. I won't see these people again because if this Wawa comes there, these stores will shut down; they will lose. I beg of you to really look at this. I heard you say that this Wawa was already zoned for this, but the only obstacle is the two residence homes. I respect zoning, but the families, the established businesses, the Ma and Pa's – there are no more Ma and Pa stores anymore. We are losing to this. I don't want to bad mouth this because this is business as well, but there are no more Ma and PAs and this ends that. Thank you.

Mr. Magdy Awad, 2607 W. Mercury Blvd., made the following statement: I own a store next to the proposed location on Mercury Blvd. at 2607 W. Mercury Blvd. "Easy Pick". The store is about three years old. It is a very new store. I have put all of my investments into it. I am not here to talk about the money or the loss because I am sure a lot of people will speak about it. I know you know what affect can happen to a small business owner like me from having a Wawa next to my store. I am here to speak about the relations I have gained through the three years I have worked with the people of Hampton and the community that I serve around my store. They come to my store every day. They know me by name. I know them by name. I greet them. I do my best to satisfy them. I give them everything they need. I reduce my prices if I have to, to satisfy them. It is not just that I am here to make money. I was dealing with this business for years to help this community. We live in the community. We spend our money in the community and through the City of Hampton. A lot of people pass us that have never been to our store. They stop by and say they never knew we were here, but we are and we help them. One of my employees went back to my country to get married. The



customers asked me "Where is Sam?" I told them he went back to get married. They keep asking "Is he not back yet?" People know us. We know them. We have relationships with them. Customers ask where is David because he always works at night? They even know our shifts. It is not just about money. It is that we live here. We know these people. They know us and we have relationships together. When I back up my van in front of my store to unload, people from the neighborhood help me bring things in from the truck and ask where to put them. In the beginning, I felt as though I should give them something, a soda, for example, but they say no. They are not here because they need something from me; it is because they like us. We also like them. We want to stay there and help them and work with them and serve them. Thank you.

Mr. Richard Brock, 2 Village Drive, made the following statement: Good evening. I have lived on the Virginia Peninsula for 22 years. I am also a retired Masterchief Petty Officer of the United States Navy. I am also a small Mom and Pop (store owner). I have lived in this area for a very long time. I am very familiar with this particular corner. I have looked at the maps and what I haven't heard is that Aberdeen is a blind curve. You can see it on their maps. It turns sharply as you continue to go down Aberdeen Rd. towards I-664. I know this because a few years ago, a friend of mine named Daniel Ryan was in a car accident on this street. I implore to you that this is not a good construction site for this Wawa. I think something similar to West Queen Street or Todds Lane where you have a 360 degree view for the intersection would be better for this particular store. I don't think anybody realizes what the volume of traffic is going to be like once this store opens up. I know this because I also own a convenience store, but it is far away from this one. It will be an impact on this community. I don't believe the people that live there realize what is going to happen on this corner. There are a lot of residents, a church and a small apartment complex across the street next to the AAA. You are going to impact this corner immensely. Thank you for your time and attention.

Mr. Jamal Esfahari, 905 Aberdeen Rd., made the following statement: Good evening. I have owned Vito's Pizza on Aberdeen Rd. for the past 18 years. I have seen 5 year old kids who are married now and have kids who come to my store. I have over 12 employees, and used to have 25. The economy is hard. What is this going to do to me? A giant store like Wawa will come to my area and will put a nail in my coffin. Every employee that I have is in walking distance from my store. That has always been because it is hard to hire employees in the restaurant business with vehicles. They all are within 1 and ½ mile walk or 20 minutes from my restaurant. All of these people are going to be without a job. They will be out of a job. I received a list from a gentleman who has a store with over 100 employees in this area at a local restaurant and convenience store. Wawa is great, and will demolish a whole lot of people in this area and I am against it. Thank you.

In response to Councilman Kearney's inquiry about what restaurant Mr. Esfahari owns, Mr. Esfahari replied he owns Vito's Pizza on Aberdeen Rd. which has been there for 63 years and will probably be gone if Wawa comes.

Mr. Michael Allen, 16 Hillcrest Dr., Newport News, Va., made the following statement: I own the property being considered for rezoning today at the corner of Mercury Blvd. and Aberdeen Rd. My property is located in the Greenwood Farm subdivision. It is not a part of the Aberdeen Gardens Historic Community, nor is it a part of the Coliseum Central Business District. My property consists of three parcels of land of which two are already zoned for commercial use. It was originally built for use as a grocery store in the

1950's. For the longest time, it was the location of Paul's Arts and Crafts. It is currently leased to Goodwood Furniture. I purchased the property in 2002 with the express intent of redeveloping the property. A year ago, I communicated with the property owners of all 44 lots in the Greenwood Farms subdivision asking them to execute a first amendment to the Greenwood Farms subdivision covenant to allow the two residences at 3 and 5 Greenwood to be released from the residential restriction in order to be permitted commercial use. As required to amend the terms of the applicable covenant and restrictions, I obtained the written consent of the majority of the owners of the Greenwood Farms subdivision and the amendment was recorded in the Hampton Clerk's office in November of 2011. A copy of the recorded amendment has been submitted to the City Council for its review. Over the last year the developer has met numerous times with City Planning, Zoning and Economic Development Departments to enhance the proposed Wawa Store and site. The enhancements have included a brick façade premium storefront, increased restrictions on ingress and egress to improve traffic flow on Mercury Blvd. and Aberdeen Rd., extensive landscaping buffers and enhanced lighting that respects the adjoining residences. The City staff has done a great job negotiating for the citizens the best land use development for this site without giving the developer any tax abatements, bonds, incentives or other public investment. This project will be a blueprint example for all the development along West Mercury Blvd. If the rezoning application is rejected today, I intend to still move forward to redevelop the current commercial site for commercial use other than existing uses, and I have had interests from at least two parties who have an interest in doing so. Those commercial uses would be by right uses in accordance with the current Zoning Ordinance and accordingly will not require rezoning. My concern, however, is that I cannot ensure that other commercial uses will have an attractive building façade as Wawa or that other uses will be as diligent about image, neighborhood and community relations as Wawa has demonstrated. This Rezoning Application gives the ability to monitor and direct the site to make it the most neighborhood friendly and community friendly attractive site for a key Mercury Blvd. intersection that sits near the entrance to the Coliseum Central Business District. I urge the City Council to support the best land use decision by allowing the rezoning and bringing the first Wawa to Hampton.

Councilman Tuck referenced the 44 covenants Mr. Allen mentioned he had a majority of and asked him what the exact number was. Mr. Allen replied 23 out of 44.

Councilman Stuart asked Mr. Allen for clarification that something is going on this corner and that we will have a substantial amount of control over this item; however, we may have no say whatsoever over future items. Mr. Allen replied he will move forward to redevelop the site without the two homes and thus will not be required to come before the Planning Commission or City Council.

Mr. Michael Higgins, 16299 Smithfield Heights Dr., thanked Council for the opportunity to speak and be heard and made the following statement: I am a small business owner in the Greenwood Shopping Center which is adjacent to the proposed site. I wanted to show my support for it. I think it would be good. The revenue and traffic would be good for my business. Thank you.

In response to Mayor Ward, Mr. Higgins stated his business name is Rock Steady Tattoo.

Mr. Alan Bourne, 22 Lynnhaven Drive, made the following statement: I was a coast to coast truck driver for many years. One thing we heard at the Planning Commission meeting was how wonderful Wawa's corporate people take care of the place. 7-11 used to have corporate people too, but now they are all going to private owners, so the people who live in our community own them. There are beautiful Wawa's in Newport News and York County, but have you seen the beautiful 7-11 directly across from George Washington Square Shopping Center or the beautiful 7-11 in front of Port Warwick? I guarantee you, you will have people hanging around bumming change if you put a Wawa at the corner of Mercury Blvd. and Aberdeen Rd. As a coast to coast trucker, I loved Wawa. I don't like them anymore after this. If I was still trucking, I would be on my on-board computer looking for one at 3:00 a.m. There are a million trucks on the road, so if you give me a parking ticket over this, there are a lot more out there and 100,000 new drivers a year. This is a small footprint for a Wawa and normally there is parking for a 75 foot long vehicle and drivers will leave the motors running in the winter. Mr. Bourne noted the two R-11 properties are single family residences which contain tenants, one of which has lived there for 10 years who will be thrown out of their home if the Wawa is approved. He then continued his statement: I can think of reasons why the Greenwood entrance is good and why it is bad. You will have trucks that will miss the left (turn) into Aberdeen which for some reason in the Planning Commission meeting, they ignored the fact that Mercury Blvd. is a divided highway; so, Aberdeen Road will get a lot of traffic with the west bound Mercury traffic. The ones that miss Aberdeen will go up and turn around and come back. I guarantee you that more trucks will pull into Greenwood than will try to make the swing by the gas pump south of Mercury. If I made that swing, by the time I get a 75 foot truck around and see the no truck sign that will surely be put up, I am not going to back out onto Mercury Blvd. That is a given. I will also leave my truck running and go get coffee because I will have done too much work to get there. Thank you.

Mr. Romy Singh, 35 Michigan Drive, greeted Council and made the following statement: I am proud to be a citizen and resident of Hampton. I live in Hampton and I own a convenience store in the neighborhood. One important thing I didn't hear in the City traffic study is that there is a school on Aberdeen which is .2 miles from that intersection. No one has raised that (issue). I drove from the Aberdeen intersection to the middle school. In the morning when we go to the store, it takes two to three traffic light cycles to turn to Aberdeen from Mercury. As a store operator, I love competition and have no problem with the competition; but, this is not a competition. Statistics say Wawa's eat small businesses. It is like a large fish that eats small fish. They force the shutdown of small businesses because whatever our purchase price is, they sell the product for less than that to bring customers inside their store. As a result, according to my study, we are going to lose two to three employees per store. We have 25-28 stores in this area. Smaller businesses cannot survive. I need to know from the City if you are in favor of small businesses or against them. I think this is the right time for you to step up and show us your support in favor of small businesses. Thank you.

Ms. Sheri Acharya, 344 Brout Drive, made the following statement: I am here for my son. I don't care for Wawa, I care for my son. I moved here from Chicago. Four years ago, we owned a small family owned restaurant in Chicago. Not ½ of a mile away, a McDonalds came in and we had to close and move here. It was only me and my husband at that time, so we could afford to do whatever we did at that time, but now we have a four year old son. I don't want to do it all over again. I don't know if Wawa has a fund that will help us if our store has to close down. If they are donating to the

community, I wonder if they have a fund for me. I will need that. I have no strength or energy left to keep fighting for me and my family to survive. I am not looking for another livelihood. I really need help from the City. Thank you.

Mr. Claude Vann Jr., 6 Pilgrim Court, greeted the Councilmembers and made the following statement: If you think Aberdeen Road has a traffic problem now, put that facility there and you will have compounded the problem. What is bothering me is that later on down the line, these small businesses will be out of business. We have 88 pumps within one mile of that intersection. How much gasoline do we need? If we go into propane and the danger of propane, that is another thing. Someone has already addressed the apartments across the street; there are 36 of them. One block south, there are 500 kids in a grade school. I am against it 100%.

Mr. Claude Vann III, 1668 Briarfield Road, greeted the Councilmembers and made the following statement: I am President of the Aberdeen Gardens Historic Civic Association. We had a meeting this past Saturday. There was a narrow vote in favor of supporting a Wawa, but I would tell you on any given day that that decision could have gone the other way. There were equally as many people from the membership of the association that voted against it, but there were also residents that participated. We conducted a survey. I asked the top three reasons why they wanted a Wawa. They were the price of gas is cheaper, it will bring tax revenue for the City and it will upgrade the appearance of the location at Aberdeen Road. The reasons against putting a Wawa there were the increased traffic at the intersection, safety of the community and school children and the quality of life issues for citizens on Greenwood Drive. We went to the Planning Commission meeting on May 3 and the decision was we didn't want a Wawa. At the meeting on June 9, there was support for Wawa. I don't envy the position you are placed in this evening. I have been communicating with Wawa's representative. They have been very gracious to me. Although Attorney Cumming mentioned there was an offer of a sign, there has been nothing but discussion and listening. I haven't sold out either way. It is a very touch and go situation. Everybody agrees that Wawa is a quality operation; they do a good job and people support them. We are concerned about our residents.

In response to Councilman Moffett's inquiry about the safety issue, Mayor Ward recommended he inquire about that after all citizens have made their comments.

Mr. Rodney Freeman, 610 Gary Lane, greeted Mayor Ward, the Councilmembers and the City Manager and made the following statement: I am for the Wawa. The reason I am for the Wawa is because of change. I have lived here for 57 years. I remember when C.E. Johnson was the City Manager and City Hall was down the street. If it hadn't been for visionaries like the City Planners and the Councilmembers and the Mayors, we would still be meeting down the street. Consequently, with vision and with change, we are sitting here in City Hall even though it was built in 1972 and has structural problems, we are still here. I listened to Dr. Harvey talk about Hampton being first. That is something we can all look forward to in the future. Wawa may not be what we are looking for now. People are afraid of change. I think if the City of Hampton could look at the possibilities of what tax revenue could be, the job opportunities would be for the citizenry, what the tax base would be and we would find out that it would be beneficial to the City of Hampton as well as the residents. I understand there are issues concerning traffic, but the traffic has been there and it is going to be there. You cannot change it because they still make cars. You look at the fact that there are going to be security

issues. There is a 7-11 down the street with people hanging around asking for change. Regardless of whatever is there, there will be things going on that will be difficult for people to comprehend and/or want to change. Don't be afraid of making changes. That is why I think we should deal with Wawa. Thank you.

Rev. Hallie Richardson, 1824 W. Queen Street, made the following statement: I stand before you in support of Wawa; however, in support of the Wawa convenience store coming to the Aberdeen area, I am also cross with the location of the facility. My question is whether or not the Wawa could possibly be moved to another identified location near the Aberdeen intersection or further into the Coliseum Central location behind the Burlington Coat Factory or Cracker Barrel facilities. There is also property at the corner of Power Plant and the Queen Street entrance that if purchased by this company could house that Wawa which would be a win/win for both. The Wawa would be in the area and would be in a location that would not endanger the community. It would also be able to service the trucks that would come in and out of that facility on a daily basis. Thank you.

Ms. Michelle Mitchell, 6 Greenwood Drive, greeted the Councilmembers and made the following statement: My property would be directly across the street from the Wawa. It is very disheartening that once again I stand before the Council to address my extreme opposition to this rezoning. I believe the voices of the people of Hampton have spoken against having a gas station/convenience store in our residential neighborhood. I had no idea when I purchased my home eight years ago, that I would have to go out of my front door and see a Wawa directly across the street. I want a safe neighborhood where my children can go out and play. Having this Wawa there, I wouldn't feel safe with my son or my stepchildren going outside. Bringing this type of business to a residential area would clearly bring more people into the neighborhood, and would increase traffic, noise, fumes and crime. More importantly, I also feel it will decrease my home value. It is my understanding that zoning laws are in place to regulate a balance between commercial communities as well as residential. I am in favor of commercial growth in Hampton. I am a school teacher, so I am in favor of that; however, not at the expense of our homes, neighborhoods and families. Once again, my position has not changed. I was here for the previous Planning Commission meeting and am totally against the rezoning request and ask that you help us preserve our neighborhoods, protect our property values by opposing this rezoning application. Thank you for your time.

Mr. Farzin Sarabi, 2401 Victoria Blvd., made the following statement: I live in Hampton. I would like to say a few words from a consumer's point of view. From a consumer's point of view, I like Wawa and am in favor of it because it brings competition for lower gas prices. When gas prices were reaching \$4 per gallon, everyone was looking for lower gas prices and Wawa offers that. If you are driving on the highway and you are a female, where are you going to stop to get gas and use the bathroom? It has the best service; it is clean; it has the best coffee; you can get rest; it is well lit and safe. For those reasons, I am here to support this. Is it hurting the community? Yes. But if you are going to stop the Wawa, you should have stopped the Walmart too. Walmart is hurting all of the small businesses too. I don't think the pizza parlor will go away. If the small businesses have tendencies to be homey and cater to the neighborhood, they will last. Wawa is a good business. Dr. Harvey was here allocating \$300,000 for his vision, but we cannot have a Wawa? You have all of those grand ideas and Wawa is just a small piece. It will help this community.

Mayor Ward noted whether or not the Wawa will affect other businesses adversely is not a material point of consideration.

City Attorney Hudson added legally, it is not a legitimate factor for the Council to take into account in making a land use decision under the zoning laws.

Mr. Nate Rhodes, 2817 Windjammer Road, Suffolk, Va., General Manager for Wawa on Victory Blvd. in Portsmouth, made the following statement: I have been with Wawa for nearly 20 years. I have opened five different stores in the Hampton Roads area and have gotten them started very well. As far as safety concerns at our site, we do not have panhandlers hanging outside because we have a good working relationship with the local Police Department. I have filed the necessary paperwork it takes so that we can put no soliciting and no loitering signs up. The police can come in and arrest anyone who is loitering at any time; so, safety is not a concern. You heard about the community involvement we have. We donated 500 drinks last week to Victory Elementary School. Next week, we are donating another 500 to the Woodrow Wilson School. We do a lot of good for the community.

Mr. Rajik Patel, 1717 Aspenwood Drive, greeted Mayor Ward and the Councilmembers and made the following statement: I am a small business owner in Hampton. My business is not too far from the Wawa (site). Having a Wawa open will affect my business. I am very against opening a Wawa. I urge the Councilmembers to not support Wawa. Thank you.

In response to Vice Mayor Wallace, Mr. Patel stated his business is the BP gas station located at 933 Aberdeen Road.

Mr. Sanket Acharya, 344 Brout Drive, greeted the Councilmembers and made the following statement: I live in Hampton. I have a small business in Hampton. I am all about Hampton. I love Hampton. We just moved from Chicago because I like Hampton. Every Monday I make a schedule for my employees. Something occurred to me when I was making my schedule. I realized that my business and the Wawa businesses are very similar businesses. They said they will do \$6,500 per day. They are willing to offer 40-45 people a job. I have a very similar business budget that does an average of \$6,000 per day. In the summer, it goes over \$6,500 per day. Mr. Acharya provided copies of a budget to the Councilmembers. When I did a budget, I hired 10 employees, not 40. I cannot make \$6,500 per day even with 40 people, so I don't know where this number is coming from. If they are willing to hire 40 people, something is missing. They must be talking about more than \$6,500 per day. I know about Wawa because I have been to a lot of their stores in Virginia Beach and Newport News. They sell approximately 1,000 cups of coffee per day. I sell approximately 200 cups per day. Thank you.

Ms. Regina Gilliam, 15 Greenwood Drive, made the following statement: I am completely opposed to the Wawa. I don't know how or when those people met. I was not there, so if it was narrow, I too would say no. I wanted you all to know that the traffic will increase. I don't care what those people say and who paid whomever to say it. There will be more traffic. A truck idling all hours of the night tearing up our sleep and rest is not what we want. If building the City of Hampton tears up communities and neighborhoods, what are you building?

Mr. Laroych Gilliam, 15 Greenwood Drive, made the following statement: Our goal is to be a people, marriages, families, relationships and to be functional habitations for God by his Word. I would encourage you that we are not for Wawa in our faces. The community is not for Wawa. We talked to the community. Our goal has always been to help people. People make up the City of Hampton. People need jobs. If the Wawa comes in, it is going to destroy jobs. Businesses are already established. We don't need a Wawa in our community. They may be needed some place else. At 15 Greenwood Drive, where we live, we don't need a Wawa. The fence they are talking about putting up is going to block my view. I like seeing. I don't like fences up that you cannot see through. I don't want the trucks making noise in my area waking me up at night causing the grounds to shake destroying the structure of our building. You have to think about this. This is a community where people live. There are older people there and children that play in the street. All of those same streets that people are going to be able to get out, people can come in those streets. They will drive from Big Bethel Road through Greenwood Drive. You will be responsible as well as Wawa when people start getting killed on Mercury Blvd., Aberdeen Road and Greenwood Drive. I don't doubt that is going to happen. When the traffic gets backed up, people may not be watching and they will bang up something and you are going to be responsible. You got some threats a little while ago when they said they were going to build something there anyway. Let them build something, just don't let it be the Wawa.

Mayor Ward reminded those in the audience to refrain from applauding.

Ms. Pandora Carter, 216 Avon Road, made the following statement: I am listening to a lot of people talk about the traffic. I am for Wawa. They are complaining about the traffic and the competition. There is traffic up and down Jefferson Avenue, up and down Mercury Blvd. As long as they continue to sell cars, we will always have traffic no matter where you go. I own three businesses. To me, competition will come around all the time and it is up to us to beef up our service in order to stay in the business. I am for Wawa to come. Wawa has cheaper gas. They have good food. I stay near Lynnhaven, not too far from where they want to build the Wawa. If the people around it would beef up their business, they would be able to survive it (the competition). Thank you.

Mr. Tom Bailey, 607 Windemeer Road, Newport News, made the following statement: I own the property at 1509 Aberdeen Road across from the apartments next to Aberdeen Gardens. I did live there; I am renting it out now. I would move back there whether Wawa comes or not. My renter likes it. We are happy. I want to speak my mind. I am not part of a group and haven't been to any community groups. I believe it has a good reputation. When I first heard about it, I thought it was good and still think it is good when I saw the presentation. I know there are a lot of concerns and want to take apart one of those concerns. I have worked for four years as a substitute teacher in Hampton and will probably be full time next year. I have substituted many times at Aberdeen Elementary School. When I heard the concern about that, I went directly to the receptionist at the school whom I know very well and explained to her the discussion at the Planning Commission meeting and asked her if she thought this would be an endangerment to the children. She said no and said they don't go to CVS. They are bussed. If it were a middle school, maybe, but K-5th grade, no way (that the kids would be in danger). I love children and that is why I teach them. I wouldn't want to hurt them at all. I don't know how it will affect Greenwood Drive. I am not addressing that because I don't know about that, but I wouldn't want them to be hurt either. If you have a good business, they (customers) are going to keep coming. For example in my neighborhood

in Newport News, Denbigh Pharmacy is surrounded by Walgreens, CVS, Rite Aid and others in the area around Colony Road and Warwick Blvd. It is there; it is strong; and nobody is going to come put them out of business. It may cause some people to have to upgrade. I've been in real estate for over 25 years and I have to upgrade or I am out. I care for everybody in this room and in the community. I don't want anybody to get hurt. I want the most people to benefit. I am in favor of it. I want the right decision to be made whether it is for or against it. Thank you very much.

Ms. Regina Carter, 53 N. Mary Peake Blvd., greeted the Mayor and Councilmembers and made the following statement: This is the first time that I have heard of this Aberdeen Gardens meeting. I am not going to say whether I am here or there, but our City streets are already torn up. There are potholes everywhere and if the trucks come in, it is going to make it worse. I feel as though if you all want a Wawa, that is fine, but look at where you live and what we need. That is all I have to say on this matter.

Ms. Juanita Alexander, 1115 Aberdeen Road, made the following statement: Members of my family have lived there since 1961. I am a retired teacher. I retired from Philadelphia and returned home in 2002. I want to say strongly that I support Wawa. We need to realize that we have a golden opportunity to control what businesses come in. Wawa has bent over backwards to bring in a business that is going to bring jobs and is going to elevate the esthetics of the community. There is going to be something there besides Goodwood because Goodwood doesn't do much business. There is going to be traffic there anyway. They have dealt with the traffic and safety issues. Now we have a first class organization that is going to be able to provide jobs and upgrade the esthetics of our community. I think we need to support it and not be afraid. I think this would be a very good deal. I have talked to many of my neighbors who are for it. Thank you for your attention.

Mr. Rudy Langford, 1446 W. Queen Street, greeted the Councilmembers and handed them a petition with signatures from residents on Greenwood, Tallwood, Crestwood and Aspenwood who are opposed to the Wawa. 20 out of 25 homes in Greenwood opposed it. Mr. Langford noted several of the residents from Greenwood and Tallwood were present.

Mr. Langford continued his statement: We have 21 business people that have businesses in that surrounding area. I am a member of Aberdeen Gardens Association. I was not present on June 9th when they had the meeting, but I understand that there was a 17/17 tie among members. The people who came in that were non-members swayed the vote; so, it was not an endorsement that supported Wawa from the Aberdeen Civic Association. It came from the citizens, but not the Aberdeen Civic Association.

Mr. Langford then asked the business people in the audience to stand. Mr. Langford continued his statement: I have heard Council say how you have supported small businesses, Councilman Stuart. You have Wawa coming in and there is no doubt it was an investment that they will establish a tax base. Do you dismiss these business people that have community ties and are established Ma and Pa businesses. What do you say to these business people who employ over 300 people? There is a decision you have to make whether you are going to support the existing businessmen that have been with us all this time, have community ties, have paid their taxes and dues or do you take



chances on a Wawa who will take our money into California, Minnesota, Tennessee and not spend it here. My time is up, I thank you for yours.

Mayor Ward noted Mr. Langford was the last citizen that signed up to speak and called for any additional speakers from the audience. There were four additional speakers.

Mr. Jerry Wilkins, 2515 W. Mercury Blvd. made the following statement: I own Greenwood Shopping Center beside the proposed Wawa (site). The issue comes to safety. There are two homeless people that live behind Goodwood in the fenced in area. We have two felons that wash cars in front of Goodwood. I think it would be much better to have the Wawa. I support the Wawa. I think it would be better for the community. Thank you.

Mr. John Vann, 28 Langston Blvd., greeted the Mayor, Councilmembers and residents of Hampton and made the following statement: I live in Historic Aberdeen Gardens myself. I've been in Hampton practically all of my life. Currently, I am for Wawa. I think it would be Hampton moving forward, Hampton first. Economic development is very important for growth. This is 2012, this is not 1940 when the community was built. It is time for the community to expand its horizons. If they choose to go outside of the boundaries and go to a Wawa they would see they are a first class operation, the food is outstanding and the gas prices are low. I think with these economic conditions, it is time to be competitive. If you look at the businessmen that stood up in the area, not being discriminatory, but you see what we have. They have come into our neighborhood. The prices they have are the highest around. They come into our neighborhood and are gouging the residents there. If they want to talk about prices, they need to be more competitive because business is competitive, so they may need to look at how they operate. Wawa would be a good addition to the community and for job creation. The building design will beautify that corner which is much needed. They are willing to make the investment. They are bending over backwards. I think we need to really take a look at what they have to offer to Hampton because it is time for a change and it is time to get with the new and out with the old. I support the Wawa. Thank you.

Mr. Ronald Davis, Sr., 4 Greenwood Drive, greeted the Mayor, Councilmembers and the City Manager and made the following statement: I have heard a lot of people express different things about the Wawa. We are not against Wawa in the City of Hampton. We (people from Greenwood) are against where it is going to be established. My house, which is close to Ms. Mitchell, would be sitting exactly in front of Wawa. In terms of safety concerns, a lot of people are trying to limit just the crime portion, but I am thinking in regards to traffic and children playing in the street. I am thinking in regards to afterhours clubbing at night and people gathering. We have seen that in different places throughout the City. Who knows about the fumes from the gasoline? Mr. Allen can put whatever he wants there, but 24/7 with trucks booming back and forth. We are not opposed to Wawa in the City of Hampton; we are just opposed to the Wawa in our front yard. Our children can't play and the grandkids cannot come over as much. Our safety concern is tailored toward somebody getting run over, somebody getting killed. Those children have to cross the street. I know a lot about traffic and crime, but my fear is that somebody is going to end up getting killed on that corner based on how it is structured. Thank you.

Mr. Ehab Bekhet, no address given, made the following statement: I own three convenience stores around the area. I am here not against Wawa because businesses

have the right to establish a new business. For me, I want to grow more if I can, so it is not a problem. The problem is everything has to be equitable. I tried to rezone a church. To have a church is C-2 or C-1. Because the neighborhood has to be 100 foot from the property line, we couldn't pray and now we are talking about we cannot have two established residential area be changed to a commercial area which isn't allowing even a church to open because they are making noise once a week. What about noise every day? Wawa can open, but there has to be zoning for that. They don't have to rezone the area. Big companies are treating corporations better than us. As far as small business owners, we cannot get the same prices as Wawa. We are not doing better because we cannot get the same deals as Wawa and Walmart. We are struggling to continue in business. Our point is rezoning has to be done in an area where no one will be affected. People live in that area and will be affected by the noise. Thank you.

Mayor Ward called for any further speakers from the audience. As there were none, she closed the Public Hearing. After a five minute break, the meeting resumed at 10:05 p.m.

Councilman Moffett asked Ms. Bunting to address safety concerns brought up during previous comments regarding fumes and potential explosions. Ms. Bunting replied she was not aware of any circumstance under which that would happen; however, she is not an expert on the subject matter nor does she believe we have an expert on commercial fuel operations. She noted Fleet Manager Mr. Rick Russ may have the information; however, he is not present. She added the questions about the operation of Wawa and how they safeguard those kinds of issues are best addressed to Wawa. She then referred the question to either Assistant City Manager to address.

Councilman Moffett expressed concern about comments made regarding potential explosions which could impact the nearby school and fumes which could impact residents in the adjacent residential properties.

Assistant City Manager James Gray stated fumes are not typically a significant problem from a fueling site. He added most of those types of sites have modern safety features which usually eliminate potential danger from fire or sparks and, in his opinion, there is no need for major concern regarding installation of fuel tanks or transferring fuel to vehicles.

At Mayor Ward's request and for the benefit of the public, Mr. Gray explained he was formerly Hampton's Fire Chief, a fire inspector, has reviewed plans, has inspected installation of underground storage tanks, has provided fire and safety inspections at facilities similar to Wawa, and is familiar with the types of installations and safety features built in to eliminate emission sources that might cause explosions at a fueling facility or convenient station; and therefore, has subject matter expertise.

At Mayor Ward's request, Community Development Department Director Mr. Terry O'Neill gave the following explanation regarding what is permissible in C-2, what would be allowable by right and what could go there without any rezoning. Mr. O'Neill stated the property is zoned C-2, our General Commercial District. The major regional commercial uses along Mercury Boulevard are primarily in a C-2 zoning category. All of the retail uses, convenience stores, gas stations, auto sales, restaurants, offices and service uses such as insurance companies, banks and other general office spaces are permitted in that category. He stated 99% of the uses on Mercury Boulevard are permitted by right.

Vice Mayor Wallace asked if the category included laundromats and tattoo parlors. Mr. O'Neill replied yes. City Attorney Hudson noted she could pull the zoning district listing all permitted uses if necessary. She then explained when you go to C-2, it will first state all the uses permitted in C-1 and add to it. Mayor Ward noted that wouldn't be necessary since the information provided gives a general idea and her purpose was to have everyone understand generally what is allowable on that corner by right.

At Mayor Ward's request, Ms. Hudson elaborated on what is legally permissible in terms of a decision. She explained in exercising your land use regulatory authority when reviewing and trying to decide on a rezoning application, you are exercising your police power and focusing on the authority granted under State law to regulate uses of property in your jurisdiction on the basis of what promotes the best interest of the public in terms of its general health, safety, welfare and general well-being. As it relates to competitive factors not being legitimate factors on which to base a zoning decision, the case law indicates that gets Council government as to the role of regulating the market and interfering with matters that business market forces are typically supposed to dictate is not a power that you have to dictate competitive environment directly based on preferences for one type of operator of the same kind of business over another – that is left to the private market place rather than government unless it has an impact on the health, safety, welfare and general well-being of the community from a police power perspective.

Councilman Moffett commented that this is one of the most difficult votes for him since he has been on Council because he has friends and family on both sides of the issue and he understands both sides of the issue. He stated he supports small businesses as well as neighborhoods. The City Attorney's comments stating we cannot legally make a decision based on how it impacts other businesses and the fact that the neighborhood association is equally divided, and the endorsement of the neighborhood association as well as the amendment by Greenwood Farms is recorded in a Circuit Court which said they approve by majority. Given all things equal, he is left with the simple basic facts and his gut feeling. Because his value system is for neighborhoods serving as the Chair of the Neighborhood Commission then he has to support the neighborhood organization which by a narrow margin is in support of it. He said he loves democracy no matter how painful because citizens have had an opportunity to have their say. As elected officials we must stand up and make decisions when the call gets tough. Councilman Moffett then made the motion to move forward with the zoning in support of the Wawa.

Clerk of Council Ms. Katherine Glass noted the materials in Council's packet do specify conditions, and therefore, Council may want to take that under consideration when making any motions. At Vice Mayor Wallace's request the Clerk read the conditions. The Clerk noted that the end of the conditions has standard legal language.

Vice Mayor Wallace then stated it references the zoning administrator having the right to enforce all of those foregoing conditions. He explained the reason he wanted the conditions read is so that everyone could understand that there are definitive restrictions, codes and requirements that this business has to meet and this was not done lightly without consideration and documentation associated with all the factors and concerns expressed.

Councilman Stuart commented it is our responsibility to step back from emotions and base things on fact. We have had a large number of eloquent speakers regarding small business; however, that is not a material condition in our decision. As a small business person we compete with regional, national and international companies. He concluded his comments stating he has arrived to the conclusion that it is better for the neighborhoods, in his opinion, to have control rather than allow whatever happens to happen because it is not advisable or responsible. He said he believes it is better for Greenwood, Aberdeen and the City as a whole to have conditions that take safety, residents and neighborhoods into account. He then seconded Councilman Moffett's motion.

Councilman Kearney reminded everyone that the three categories of capitalism are private ownership, profit and competition as compared to socialism and communism. There is no right to destroy any of those three and in doing so; you do away with a capitalist society. He agreed with Councilman Stuart's comments regarding companies having to compete harder when competition arrives. He stated he visited the Wawa in Newport News and was impressed with its amenities including the deli and its cleanliness. He said he remembers when Richfood and Paul's Arts and Crafts were at the location, but unfortunately unexpected things happen when commercial property is next to a residential property; however, it is not illegal to have the two properties near each other. In his opinion, this is a quality endeavor; and therefore, he will support it. He noted the community is split regarding what they would like to do and he kept a count of those who were in favor and not in favor of the project; 17 people were not in favor including small business people and 12 people were in favor of it. He added in his opinion, this will enhance the area and will be good for the neighborhood just as the AAA building was when it came in a few years ago. He noted that this area has changed for the better over the last 10 years.

Councilman Tuck noted not very many people were in favor of Wawa when he attended the February Aberdeen meeting; however, he is pleased that at last week's meeting there was more support for it. He continued stating after having a conversation with Mr. Cumming, he visited the Wawa located in the Denbigh section of Newport News and noticed that both Newport News locations were buffered from the community by a variety of businesses, yet this one will not be. He stated he recently spoke with an Aberdeen resident who stated she reluctantly supported the Wawa, but supported it because she is aware of what will be there versus something else coming to the site that she may not be in favor of.

Councilman Tuck expressed concern about the traffic and quality of life in the area. He explained there will be approximately 50,000 cars going in one direction on Mercury Blvd., and additional traffic around Wawa. He then listed examples of how patrons of other convenience stores in the community do not follow directions, for example "no left turn". He also expressed concern about large trucks and other vehicles making noise and refueling during late night hours. He iterated he will vote against this rezoning for the following reasons: the additional traffic, the quality of life and the impact it may have on the safety of the children going to Aberdeen Elementary School. He noted he believes it is a good land use and would possibly support it if the footprint was changed.

Vice Mayor Wallace stated this is a difficult decision for him because so many of his supporters are on both sides of the issue. He said while the traffic situation will not be ideal for anything in that location, the fact that staff has assured Council that it will work

gives him some comfort. He then commented that there is enough separation from the historical area that it will have minimal or no impact on the historic boundaries of the community. Vice Mayor Wallace continued stating he thinks it is ironic that both the Greenwood and Aberdeen communities approve, but not by an overwhelming majority. There has been limited community support that has been proposed. He said he does not believe that 25-28 businesses will close and doesn't believe any economic study will support that. The City Attorney has ruled that we cannot make judgments on the basis of trying to impact and control the market. He noted at this point he is still undecided as to how he will vote.

Mayor Ward agreed with Vice Mayor Wallace and everyone who stated this is a difficult decision. She commented that the vast majority of the property is zoned C-2 and this use would enable some level of control which in her opinion is of great benefit to the neighborhood. She noted that she has empathy for the adjoining property owners and the people on Greenwood; however, is inclined to support the Wawa.

PRESENTED by Donald Whipple, Senior Planner. John Yorks, the City of Hampton's Traffic Engineer, also provided information. The applicant's attorney, Lawrence G. Cumming, presented information on behalf of the applicant. He was accompanied by Ted Yost who gave an overview of the Wawa company. A traffic engineer, Carroll Collins, provided information on behalf of the applicant.

HELD PUBLIC HEARING - there were multiple speakers on this item.  
Following the public hearing, at 9:58 p.m., Mayor Ward took a brief recess.

APPROVED - subject to five (5) proffered conditions.

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Councilmember Christopher G. Stuart

**Aye:** 4 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Molly Joseph Ward

**Nay:** 2 - Donnie R. Tuck, George E. Wallace

**Absent:** 1 - Joseph H. Spencer, II

## USE PERMIT

22. 12-0217 Use Permit Application No. 1081-2012 by Bouraee & Heavens, LLC, to have outdoor dining at the Heavens' Pizza and Tap House restaurant located at 308 Buckroe Avenue (LRSN 12006878).

Mayor Ward stated she is in favor of this application. She stated no one signed up to speak and then called for any speakers from the audience. As there were no speakers, she closed the Public Hearing.

Councilman Kearney stated he met the restaurant owners and they have a wonderful product. He explained the applicant wishes to make the front of the establishment an area where people can order and then sit at picnic tables to enjoy their food. He noted this type of thing has been done in the area in the past and he sees no objection. He stated the Buckroe Civic Association, as well as other businesses and neighbors in the

area have no objections and are excited about it. He added he also supports this application.

Councilman Stuart commented that he has eaten at the establishment and this is the type of business we want to see in Buckroe because it is within walking distance from the beach and offers high quality food.

Conditions:

**1. Site:**

- a. The area to be utilized for outdoor dining shall be limited to fifteen (15) feet of depth and twenty-four (24) feet of width, for a maximum of three hundred and sixty (360) square feet, and located in front of the building.
- b. The area of the operation shall be kept clean and free of litter.
- c. Tables, chairs, and other furniture placed within the outdoor dining area shall be readily available for use. Any furniture which is not readily accessible may not be stored within the outdoor dining area, but must be stored within a wholly enclosed structure.

**2. Operation:**

- a. Outdoor dining facilities are for sit-down food and beverage service only.
- b. Hours of operation shall not extend beyond 6:00 AM to 10:00 PM, Sunday through Saturday.

**3. Capacity:** The combined occupancy of the indoor and outdoor areas shall be limited to 40 persons or the maximum capacity as determined by a city building official, whichever is fewer.

**4. Lighting:** All outdoor lighting shall be focused downward and inward in a way that prevents spillover onto adjacent properties.

**5. Term of Permit:** The use permit shall be valid for eighteen (18) months from the date of approval by the Hampton City Council. After twelve (12) months of operation, prior to the expiration date, the use permit will be scheduled for review by the Director of Community Development to consider if the continuation of the use permit would not be detrimental to the public health, safety, and welfare and that to continue the activities under the use permit would not cause public inconvenience, annoyance, disturbance, or have an undue impact on the community or be incompatible with other uses of land in the zoning district. The review will be based in part, upon a physical site review, traffic flow and control, hour and manner of operation, noise, light, neighborhood complaints, police service calls, and any violations of any federal, state or local law. If after review, the Director of Community Development determines that the use permit would not be detrimental to the public health, safety and welfare and that to continue the activities under the use permit would not cause public inconvenience, annoyance, disturbance or have an undue impact on the community or be incompatible with other uses of land the zoning district, the Director of Community Development may administratively extend the use permit in five (5) year increments. Each such extension shall be subject to the same

administrative review. If the Director of Community Development determines that that the use permit would be detrimental to the public health, safety and welfare and that to continue the activities under the use permit would cause public inconvenience, annoyance, disturbance or have an undue impact on the community or be incompatible with other uses of land the zoning district, the Director of Community Development will notify the Permittee of a denial of the extension in writing. The denial of an extension of the Use Permit will not require the removal of any structure or structures constructed or installed for the outdoor dining area. A Permittee aggrieved by the decision of the Director of Community Development may, upon written request within 30 days of the decision, have the matter reviewed by the Planning Commission and the City Council. Nothing contained herein shall limit the rights of a Permittee to seek a new use permit.

6. **Revocation:** Permittee shall comply with all applicable federal, state, and local statutes, laws, ordinances, codes and regulations now in effect during the tenure of the use permit. The City may revoke the use permit for a violation of this condition including, but not limited to failure to pay taxes (real property or other applicable tax). The revocation process shall follow the procedure for approving the use permit.
7. **Expiration:** The use permit shall automatically expire and become null and void if new construction of the site improvements has not been completed within two (2) years of the issuance of the use permit.

HELD PUBLIC HEARING - there were no speakers on this item.

APPROVED

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Christopher G. Stuart

**Aye:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nay:** 0

**Absent:** 1 – Joseph H. Spencer, II

## RESOLUTIONS

23. 12-0225 Resolution Authorizing The Execution Of A Use Agreement Between The City Of Hampton And Girls, Inc. To Use 4051 Sq. Ft. Of The Y.H. Thomas School Building At 1300 Thomas Street

**WHEREAS**, the City is the owner of real property located at 1300 Thomas Street, commonly known as the Y.H. Thomas School Building (the "Property");

**WHEREAS**, Girls, Inc. desires to use 4051 square feet of two rooms of the Property;

**WHEREAS**, Parks and Recreation staff has determined that it is in the best interest of the City and the community to allow Girls Inc. to use the Property.; and

**WHEREAS**, the Council has determined that the terms and conditions of the Use Agreement are acceptable.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Hampton, Virginia as follows:

1. That it approves the Use Agreement with Girls, Inc. to use 4051 square feet of two rooms of the Property;
2. That the City Manager or his Authorized Designee is hereby authorized to execute and deliver to Girls, Inc. the Use Agreement in substantially the same form as hereto; and

Mayor Ward stated in her opinion, this is a wonderful idea and she supports the initiative. Mayor Ward stated no one signed up to speak and then called for any speakers from the audience. As there were no speakers, she closed the Public Hearing.

HELD PUBLIC HEARING - there were no speakers on this item.  
APPROVED

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Councilmember Ross A. Kearney, II

**Aye:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nay:** 0

**Absent:** 1 – Joseph H. Spencer, II

24. 12-0226 Resolution Authorizing The Execution Of A Use Agreement Between The City Of Hampton And Inspiring Minds To Use 2768 Sq. Ft. Of The Y.H. Thomas School Building At 1300 Thomas Street

**WHEREAS**, the City is the owner of real property located at 1300 Thomas Street, commonly known as the Y.H. Thomas School Building (the "Property");

**WHEREAS**, Inspiring Minds desires to use 2768 square feet of one room of the Property;

**WHEREAS**, Parks and Recreation staff has determined that it is in the best interest of the City and the community to allow Inspiring Minds to use the Property; and



**WHEREAS**, the Council has determined that the terms and conditions of the Use Agreement are acceptable.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Hampton, Virginia as follows:

1. That it approves the Use Agreement with Inspiring Minds to lease 2768 square feet of one room of the Property;
2. That the City Manager or his Authorized Designee is hereby authorized to execute and deliver to Inspiring Minds the Use Agreement in substantially the same form as hereto; and

Adopted at the regular meeting of the City Council of the City of Hampton, Virginia, held on June 13, 2012.

Mayor Ward stated in her opinion, this is a marvelous idea that we should support. She stated no one signed up to speak and then called for any speakers from the audience. As there were no speakers, Mayor Ward closed the Public Hearing.

HELD PUBLIC HEARING - there were no speakers on this item.  
APPROVED

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Councilmember Ross A. Kearney, II

**Aye:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nay:** 0

**Absent:** 1 – Joseph H. Spencer, II

## GENERAL ITEMS

## ORDINANCES

25. 12-0197 Ordinance To Amend And Reenact Chapter 38 Of The Code Of The City Of Hampton Virginia Entitled "Vehicles For Hire", Division 5 Entitled "Fares", Section 38-127, Entitled "General Rates Prescribed; Charging Different Rates" And Section 38-129 Entitled "Charge For Waiting Time" To Increase The Rate Allowed To Be Charged For The First One-Seventh Mile From \$1.75 to \$2.75, And Increase The Rate For Each Additional One-Seventh Mile From \$0.25 To \$0.30 and To Repeal Division 7 Entitled "Fuel Surcharge" To Eliminate The \$1.00 Fuel Surcharge.

Mayor Ward said it is her understanding that if the \$1 fuel surcharge is eliminated, the rate increase will be a wash. Ms. Bunting clarified that is correct; however, it is for the first 1/7th of a mile. Mayor Ward stated there is a need for the cab company owners

who made the request for the rate increase to explain the economic argument for the increase.

Ms. Bunting clarified this is regarding the ½ cent increase and the per mile charge after the first 1/7th of a mile. Councilman Kearney clarified it is five cent.

Ms. Judy Swystun of Yellow Cab listed the reasons why the rate increase is needed as (1) all other cities in Hampton Roads have higher taxi rates (2) Hampton has quality taxi service (3) Hampton does not have any taxicab service issues or complaints (4) the drivers do a great job (5) it has been over seven years (since there was an increase) (6) the Consumer Price Index (CPI) since 2005 has gone up 18% and (7) gas has gone up 42% since the last increase. Ms. Swystun added we (cab companies) don't come to the City often, and we are asking for the fare increase in order to become in line with the rest of the Hampton Roads cities.

Mayor Ward stated we understand issues including high gas prices, the length of time since there was a rate increase, and other localities having higher rates; however, we need to understand why we should raise the rate a nickel after the first 1/7th of a mile and how that relates to gas prices and the amount of money being asked for. Mayor Ward then clarified this information is important because the increase will increase consumer costs; and therefore, we have to understand the rationale behind it.

Ms. Swystun explained profit margins have gone down 80% in the last two years, and with the economic downturn, we need to be able to sustain a certain level. She said the drivers have to have a certain level of income in order to drive taxis; and therefore, if we and the drivers cannot compete in Hampton, they will potentially drive elsewhere in an effort to receive more money for doing the same work in a different jurisdiction.

Ms. Swystun stated perhaps she does not understand the Mayor's question and asked Mr. Moltiyidine Cheikh of American Taxi to give the Mayor an explanation. Mayor Ward clarified Council understands that cab companies would like to see a rate increase because the cab companies have an increase in costs; however, her question is what the relationship is between the two. Mayor said we are making a decision based on the fact that the rate increase is needed because of the increase in gas prices.

Mayor Ward clarified her question by posing the following scenario. If the cost to buy an apple is \$1 and a company sells apples for \$1.25 and we regulated apple prices, we would be discussing specifics such as what the cost was for the company to purchase the apples, what we were regulating the cost to be and what the cost would be to the consumer versus only discussing that the price of apples had gone up and what other localities were charging. Instead we would be specific about what the costs were to the company and how it correlates to the number being asked to impose on the consumer.

Ms. Swystun stated the consumer price index has gone up 18% resulting in everything we have purchased over the last seven years to increase, yet we are still at the old rate. Our profits are going down, yet costs are going up.

Mayor Ward clarified her question is we need to understand the reason the specific increase amount is a nickel. We are being asked to impose the increase on the consumer, and therefore, we need to have some logical basis in order to make the decision that a nickel is the right number.

Councilman Stuart said the most compelling argument was made by the drivers because his understanding of the industry is that the owners charge a fixed price. He said while the owners may be able to speak to certain methodologies, they may not be the best ones to justify the increase. Mayor Ward replied the owners are the ones who have asked for the nickel increase essentially; and therefore, we need to understand where that specific figure comes from other than it is the amount other localities have increased.

Mr. Moltiyidine Cheikh of American Taxi said taxi transportation is based on providing the best service from the drivers' perspective and the ability for them to make a living. He explained cab companies lease cabs to the drivers that have to earn a minimum amount to be able to remain in the market. Due to the economy and increase in gas prices, we have dealt with a loss of drivers which affects how we lease to drivers. We cannot charge the same lease amount that we did seven years ago; and this is a way we as a company can compensate for that. He said drivers lose approximately \$402 per month; and therefore, the compensation of a nickel increase will give \$150-\$200 per month back to the driver which still does not compensate for the total \$400 loss. This is an adjustment to keep our drivers motivated and making money to be able to continue and sustain the increased rate.

Mayor Ward noted everyone understands the economy and the need for more money; however, Council needs to understand the reason the increase is specifically a nickel versus four cents, seven cents or ten cents. Ms. Swystun said if it were, for example, ten cents, there would be an 18-30% increase. Mayor Ward clarified she was not advocating a ten cent increase; instead, she was trying to get clarification regarding the math. Mayor Ward continued stating there is a formula which determines a number that is fair to the consumer based on cost increase, and therefore, Council needs to know how to explain that a nickel is the correct amount other than the stated reasons that a nickel is easy to calculate and that it is the same amount Newport News increased. Ms. Swystun gave the reason as it is less than what the consumer price index has been over the last seven years.

Mr. Cheikh added there are two ways to determine an increase. Either start with the meter which is already \$2.75 and add something to it or add five cent to each 1/7th of a mile which equals 35 cents gained in one mile. This is in consideration of low income people because they are the ones who usually take one to two mile trips and there will be no effect on them because instead of having the charge automatically on the \$2.75 initial charge which would affect everybody. The five cent increase on every 1/7th of a mile is the best way to build in an increase as the mileage goes up.

Vice Mayor Wallace asked what percent of the nickel increase will go to the driver and what percent will go to the cab company. Mr. Cheikh replied the entire amount will go to the drivers.

Councilman Moffett asked should Council approve this rate increase, will the cab companies increase the drivers' cost to lease the vehicles? Mr. Cheikh replied his company has no intention to do that and noted that their lease is the lowest in Virginia. He added his company has suffered a great loss of drivers, and the fewer drivers there are, the more the community suffers; and therefore, their main concern is ensuring their

drivers make money and serve the community. Ms. Swystun noted Yellow Cab has not considered that either (an increase in the lease amount).

Councilman Stuart stated while this amount seems minuscule to some, it is important to the cab industry. He also stated that being out of alignment with the City of Newport News causes stress and challenges for drivers and other entrepreneurs; so, we need to seek a balance. He noted many people expressed concern about the disproportionate affect this will have on seniors. He then asked what the senior discount is in Hampton.

Ms. Swystun stated currently, there is no senior discount in Hampton. She then addressed the comment made regarding 65% of riders are elderly. She stated there is a segment of riders that are elderly; however, it is approximately 5%. She continued stating the elderly generally ride through the Peninsula Agency on Aging or Handiride. She noted there is a Newport News Ordinance which would allow them to do some type of discount and they would do that in Hampton if Council wishes.

Councilman Stuart said that means currently the drivers are precluded from offering a discount and asked if the cab companies would be willing to offer a senior citizen discount. Ms. Swystun said they would entertain the discount as long as the Police Chief approves of it.

Councilman Tuck moved to table this for the following reasons: we are missing information, we are introducing things that have not been previously considered, there is uncertainty regarding why the amount is five cents, there has been no outcome of Police inspections done in May to determine whether or not the meters are in compliance, and the new Councilmembers should be able to weigh in on this.

Mayor Ward informed everyone that due to the late hour of 11:00 pm, we need to agree to have a continuation for these matters.

Mayor Ward commented that she would like to support the cab companies and the drivers so that their expenses are covered; however, she is not comfortable with the explanation as to why that is the exact number being passed on to the consumers.

City Attorney Hudson explained the motion to table the item defeats the other motion, and therefore, the motion should be to defer.

Councilman Tuck moved to defer the item to July 11, 2012.

DEFERRED (7/11/2012) - prior to the vote Judy Swystun of Yellow Cab and Moltiyidine Cheikh of American Taxi provided information and responded to questions from members of City Council.

**Motion made by:** Councilmember Donnie R. Tuck

**Seconded by:** Councilmember Ross A. Kearney, II

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

26. 12-0262 Motion to Extend Meeting Time Beyond 11 p.m.

MOVED TO extend the meeting beyond 11 p.m.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 5 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace

**Nays:** 1 - Molly Joseph Ward

**Absent:** 1 – Joseph H. Spencer, II

27. 12-0211 Ordinance to Amend and Reenact Chapter 34 of the Code of the City of Hampton, Virginia by Adding a New Article V entitled "Vacation of Public Streets, Alleys, Easements and Other Public Ways" and the Establishment of an Application and Review Fee of \$100.00 as Authorized by Code of Virginia §15.2-2007

Councilman Kearney noted there are many alley ways in the older neighborhoods in Hampton and asked the City Manager if there were 10 people there, would each person have to pay \$100? Ms. Hudson explained you would be proceeding under a different process where you don't have to get a neighbor's consent but you do have to pay. Councilman Kearney noted that currently they don't have to pay anything. Ms. Hudson concurred. Councilman Kearney then said we are not voting for something that will create the new bureaucracy for who pays their share. Ms. Hudson explained there is a single fee for any single vacation application. Councilman Kearney asked for clarification that we are putting in a new fee. Ms. Hudson agreed.

Ms. Bunting explained currently, the only process we have is if all property owners agree. However, we do not have a process for dealing with situations where 8 or 9 people agree, but one doesn't. This provides an alternative process by which Council can hear those vacation requests.

Ms. Hudson added that a Public Hearing is required, and therefore, there would be input on the application and it would not be a unilateral decision by the applicant. Ms. Bunting noted that would be part of the staff review and analysis provided to Council as part of the Public Hearing.

Vice Mayor Wallace asked for clarification that this means the review fee would be applicable to an application which could have one to ten people as part of the application. Ms. Hudson concurred and added that in addition to adjacent property owners having input, the entire public would have input pursuant to the advertising and Public Hearing process. Ms. Hudson explained the Charter provision that allows vacation by consent of adjacent property owners would still be available if individuals chose to pursue that route; however, this offers an alternate method for vacating a public right-of-way where people may have a good reason for wanting it vacated, but for other reasons cannot get the consent of the adjacent property owners for reasons not necessarily germane to whether or not the City still needs the property.

Ms. Bunting said this is creating a second means that doesn't take away the current means; instead, it provides an alternate where the 100% threshold is not met.

Ms. Hudson added in addition to the \$100 fee, you would also have to pay the fair market value for the property being vacated which you don't have to do now. We are proposing that you incorporate into the City Code the vacation method that is in the

State Code and that other localities use. However, we wouldn't give up our present vacation process; it would give another means to pursue the same end.

Councilman Moffett inquired about how the \$100 amount was derived. Ms. Hudson replied the State Code permits the fee of \$100. She explained the fee covers staff's cost and time for the review. When an application for vacation, encroachment or any land development related matter comes in, any number of departments have to look at the decision and determine whether or not it is practical for the City to give up its interest in that land.

Councilman Kearney commented for 52 years, since consolidation, people in that department were paid to do this, but now we are charging. He stated he does not agree with that argument because people were hired to review these types of applications. He stated there was a case many years ago where the City gave away the right-of-way between Sherwood Ave. and Jane Bryant Elementary School. There was an opening in the 7 foot fence to allow children to walk to the playground. A fence goes up and the children no longer have access to the playground. Sometimes the process is done with good intentions, but people don't ask others in the community if they use the right-of-way or the alley.

Ms. Bunting noted the Public Hearing process which would be proposed under this Ordinance allows for a wider community review. She said she understood Councilman Kearney's concern regarding the fee; however, we also have not received compensation for giving the land away where we have vacated it before. As we are updating our Ordinances, it is appropriate to ask questions. We felt as staff that it was appropriate to recommend what the State Code permits as a way of recouping costs.

Vice Mayor Wallace noted we also have fees for a multiplicity of services done under the Land Development Office currently in place. Ms. Bunting added most of them do include rezonings, use permits and conditional privileges. This is one where we have relied on the City Charter provision in the past as opposed to availing ourselves of the State Code provision that most localities use.

**APPROVED**

**Motion made by:** Vice Mayor George E. Wallace

**Seconded by:** Councilmember Donnie R. Tuck

**Ayes:** 5 - Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 1 - Ross A. Kearney, II

**Absent:** 1 - Joseph H. Spencer, II

28. 12-0234 Ordinance to amend and reenact Chapter 37 "Taxation", of the Code of the City of Hampton, Article VII, "Tax on Food and Beverages Sold by Food Establishments" to require food establishments to post a bond and the procedures to be released from the bond requirement.

Mayor Ward stated she is familiar with this having served as Treasurer and having worked on some of the bond enforcement and collection issues. She explained this is not going to change requirements for new businesses; instead, this changes requirements with regards to delinquent businesses. Ms. Bunting agreed. Mayor Ward continued stating this is not attempting to replace a new bonding requirement on new or

existing businesses; the only intent is to make it easier for the Commissioner of the Revenue to collect food and beverage taxes by requiring a bond when he realizes there is a delinquency problem with a food and beverage establishment. There have been recent instances where people got in a large amount of debt without a bond requirement when things went south, and therefore, the Commissioner of the Revenue is searching for a way to stop that.

Vice Mayor Wallace asked for clarification if there is already a bond requirement for new businesses and if this Ordinance will not be applicable to new businesses? Ms. Hudson agreed. Ms. Bunting added what is changing is the addition of the ability of the Commissioner to require an existing business that has gotten delinquent to repost a bond to cover potential future delinquencies. Vice Mayor Wallace said his concern was if a new business was created in a façade or building formerly occupied by a prior business occupant and the license bonding cost for the new business was predicated on volume of business on the predecessor business which is not always accurate. He said his concern is having some kind of oversight or appeal basis. He asked if there will be an appeal process for a business that does not agree with the conclusion drawn by the Commissioner.

Mayor Ward clarified that the only part of the law that is changing is what applies to delinquent businesses. Vice Mayor Wallace asked if the Ordinance defines what a delinquent business is. Ms. Hudson stated the Ordinance brings clarity to the question of what kind of unsatisfactory payment history puts you in a position for the Commissioner of Revenue to require a bond of you as an existing food establishment. It makes clear what the standards are that the Commissioner may require any food establishment which has been delinquent for two or more months during any 12 month period to post a bond in accordance with the provisions of subsection A, an amount that represents taxes that would be due on gross receipts during one quarter of operation.

Mayor Ward clarified this is not a property tax; instead, these are monies collected from the people that have eaten in their restaurants which have not been paid to the Commissioner of the Revenue.

Ms. Hudson stated this makes it easier for businesses to post the bond by expressly permitting them to post a cash bond rather than a corporate surety bond which may be more difficult for businesses to get. It also makes clear the circumstances under which they can be released from the bond. We are trying to give the Commissioner of the Revenue a greater tool to collect taxes as well as greater clarity for the businesses regarding when they have to do it, when they have to be released from it and give it more methodologies to come up with a bond.

**APPROVED**

**Motion made by:** Vice Mayor George E. Wallace

**Seconded by:** Councilmember Christopher G. Stuart

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

**RESOLUTIONS**

29. 12-0223 Resolution Authorizing the Grant of an Approximately 256 Square Foot Right-of-Way Encroachment Over a Portion of City-Owned Property Known as Locust Avenue, Which Abuts the Property Owned by David E. Ellis and E. Victoria Ellis Located at 913 Chesapeake Avenue (LRSN 1004297)

**WHEREAS**, David E. Ellis and E. Victoria Ellis (the "Ellises") own property located at 913 Chesapeake Avenue (LRSN 1004297), which also is located at the corner of Chesapeake and Locust Avenues;

**WHEREAS**, on March 9, 2005, the City approved the Ellises' request to vacate an approximately 933 square foot area of Locust Avenue to enable them to construct a sunroom;

**WHEREAS**, in August 2006, the Ellises applied for and received a building permit (Permit No. B06-02107) to install a fence in a 32' x 8' right-of-way area, 256 square feet, more or less, of Locust Avenue (the "Encroachment Area");

**WHEREAS**, recently, Public Works was made aware of the unauthorized encroachment; and the Ellises desire to legalize it; and

**WHEREAS**, City Staff has reviewed the request and recommends approval of the Ellises' request pursuant to the execution of the Encroachment Agreement attached hereto which grants the Ellises a revocable license.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Hampton, Virginia, as follows:

1. That the Encroachment Agreement between the City of Hampton and David E. Ellis and E. Victoria Ellis is hereby approved; and
2. That the City Manager, or her authorized designee, and Clerk of Council are hereby authorized to execute and attest the Encroachment Agreement, as set forth in this Resolution.



Mayor Ward stated staff supports this. This is property they are not using and will remove the need for us to take care of this piece of property. Ms. Hudson agreed with Mayor Ward's comments. Mayor Ward continued stating there was an objection from a neighbor that she had a telephone conference with; however, his objection was not related to this fence specifically and is related to a different fence.

The Encroachment Agreement is attached to the minutes.

**APPROVED**

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

**APPOINTMENTS**

30. 12-0154 to consider appointments to the Hampton Redevelopment and Housing Authority (HRHA)

REAPPOINTED Louis Morris for a second term which will expire on June 30, 2016, and appointed Valerie L. Purcell to a term commencing on July 1, 2012, and expiring on June 30, 2016.

**Motion made by:** Vice Mayor George E. Wallace

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 - Joseph H. Spencer, II

31. 12-0231 to consider appointments to the Planning Commission

APPOINTED Chris Snead as the Council representative to the Planning Commission and Ms. Snead and Vice Mayor Wallace to work with the Clerk of Council to advertise a vacancy on the Planning Commission which occurs in September.

**Motion made by:** Vice Mayor George E. Wallace

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 - Joseph H. Spencer, II

32. 12-0242 to consider appointments to the Transportation District Commission of Hampton Roads

APPOINTED Councilman Moffett as the ex officio member, and Councilman-Elect W. H. (Billy) Hobbs, Jr. as the alternate.

**Motion made by:** Vice Mayor George E. Wallace

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 - Joseph H. Spencer, II

33. 12-0247 to consider the appointment of an alternate to the H2O Community Development Authority.

APPOINTED John Ishon to continue the term vacated by Mr. Sanford where Mr. Ishon will serve as an alternate until June 30, 2013.

**Motion made by:** Vice Mayor George E. Wallace

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 - Joseph H. Spencer, II

34. 12-0261 Resolution of the Hampton City Council Appointing A Member and Alternate Member to the Governing Board of the Transportation District Commission of Hampton Roads Effective July 1, 2012 in Accordance with Section 15.2-4507 of The Code of Virginia

**WHEREAS**, effective July 1, 2012, Section 15.2-4507 of the Code of Virginia allows the governing body of each local government within the area served by the Transportation District Commission of Hampton Roads ("the Commission") to appoint to the board of the Commission either a member of the governing body or the city/county manager of the locality, to serve as an *ex officio* member with voting privileges;

**WHEREAS**, Section 15.2-4507 of the Code of Virginia also allows the governing body of each local government within the HRT district to appoint "from its membership or otherwise", a designated alternate member who shall be able to exercise all of the powers and duties of the council member appointee, when that member is absent from Commission meetings, and who may also serve in the absence of the citizen member from the City of Hampton appointed by the Governor of Virginia ("the Governor").

**WHEREAS**, Will Moffett, a duly elected member of this City Council has been nominated for appointment to the Commission board as an *ex officio* member in accordance with Section 15.2-4507 of the Code of Virginia; and

**WHEREAS**, Hampton resident W. H. "Billy" Hobbs, Jr. has been nominated for appointment to the HRT board as an alternate to both the council member appointee and the Governor's Hampton appointee, his/her qualifications having been found suitable.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAMPTON, VIRGINIA THAT:**

1. Will Moffett is hereby appointed to the Transportation District Commission of Hampton Roads as an *ex officio member* of the Commission board, with voting privileges, effective July 1, 2012 for a term(s) established by applicable law or rules of the Commission.

2. W. H. "Billy" Hobbs, Jr. is hereby appointed to the Transportation District Commission of Hampton Roads as an alternate board member who may serve in the absence of, and with the same rights and privileges as the Hampton Council member appointee, or in the absence of the Governor's appointee to the Commission from the City of Hampton, effective July 1, 2012, for a term(s) established by applicable law or rules of the Commission.

**APPROVED**

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Absent:** 1 – Joseph H. Spencer, II

**THERE WERE NO REPORTS GIVEN BY CITY MANAGER, CITY COUNCIL, STAFF, COMMITTEES**

**THERE WERE NO MISCELLANEOUS NEW BUSINESS ITEMS DISCUSSED**

**ADJOURNMENT**

\_\_\_\_\_  
Molly Joseph Ward  
Mayor

\_\_\_\_\_  
Katherine K. Glass, CMC  
Clerk of Council

Date approved by Council \_\_\_\_\_